United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,754

United States Court of Appeals
For the
District of Columbia Circuit
FILED AUG 14 1953
Joseph W. Stewart
CLERK

DISTRICT OF COLUMBIA, *Petitioner*,

v.

NATIONAL WILDLIFE FEDERATION, *Respondent*.

902

On Petition for Review of a Decision of the District of Columbia Tax Court

PRINTING DIVISION—D. C. GOVERNMENT

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PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

1 DISTRICT OF COLUMBIA TAX COURT

Docket No. 1336

NATIONAL WILDLIFE FEDERATION, A CORPORATION, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

Filed Sept. 29, 1952 District of Columbia Tax Court

PETITION

The above-named petitioner appeals from an assessment of personal property taxes against it, and avers as follows:

1. The petitioner is a scientific, non-profit institution incorporated under the laws of the District of Columbia, whose office is at 3308 14th Street, N.W., in the District of Columbia. Jurisdiction of this Court is invoked under 47 D. C. Code (1940 ed.) Secs. 1208, 2403, and other pertinent statutes.

2. Petitioner was by notice of assessment dated September 1, 1952, assessed District of Columbia personal property taxes on its personal property for the fiscal year July 1, 1952 to June 30, 1953, in the total amount of $1764.62, payable in two half-yearly installments of $882.31 each.

Pursuant to the provisions of 47 D. C. Code (1940 ed.) 2403, petitioner paid the full amount of the tax of $1764.62 on September 23, 1952, to the Collector of Taxes, of the District of Columbia, under protest, as indicated by Exhibit "A" hereto.

3. Respondent erred in assessing the personal property of petitioner for the following reasons:

(a) Petitioner is a "scientific institution incorporated under the laws * * * of the District of Columbia and not conducted for private gain" within the meaning of 47 D. C. Code (1940 ed.) 1208, and as such is entitled to exemption of its personal property from District of Columbia personal property taxes. Despite such fact, and despite the fact that petitioner's property falls typically within the clear unambiguous terms of the statutory exemption, nevertheless it has repeatedly been denied personal property exemption by the Collector of Taxes. On June 27, 1952, the petitioner was officially notified of a holding of the Board of Personal Tax Appraisers that its personal property was taxable. It paid the current taxes under protest in writing on September 23, 1952. It is clear that the respondent has erred in thus taxing exempted property of petitioner.

(b) Respondent in 1941 made a finding that petitioner was not entitled to personal property tax exemption (*National Wildlife Federation* v. *District of Columbia,* Docket No. 354 (1941), Opinon No. 280). Although it found that petitioner was a "scientific institution incorporated under the laws of * * the District of Columbia and not conducted for private gain", it nevertheless interpolated a condition into the statutory language, that petitioner does not render a sufficient "quid pro quo" to the District of Columbia to warrant exemption. Petitioner contends that this previous opinion of the Board of Tax Appeals has now been overruled and should not bar petitioner from exemption.

(c) Petitioner has been denied exemption of its personal property by administrative fiat in disregard of the express mandate of an unambiguous statute, and has been denied its rights without due process of law secured by the Constitution.

(d) Under any interpretation of the law, petitioner's activities have changed, and today renders valuable services to the community of the District of Columbia, and merits exemption of its personal property under the "quid pro quo" theory under which it has been denied its statutory rights. Although lengthy briefs were submitted to the Board of Personal Tax Appraisers, covering both the law and the facts of petitioner's present claim, on June 27, 1952 such claim was rejected, and the current taxes were paid under protest in writing on the 23rd day of September, 1952.

4. The facts upon which petitioner relies as sustaining the assignments of error are:

(a) The petitioner's personal property falls within the exemption provided for in 47 D. C. Code (1940 ed.) 1208, in that petitioner is a "scientific institution incorporated under the laws * * * of the District of Columbia and not conducted for private gain".

(b) The previous findings of law in 1941 under which petitioner has been denied exemption, are erroneous, and have been overruled by decisions of the United States Court of Appeals and the Supreme Court of the United States.

(c) In any event, today petitioner performs valuable services for the District of Columbia, its personal property situate here is used for the benefit of the local community, and on any theory deserves exemption.

WHEREFORE petitioner prays:

1. That respondent refund the amount of $1764.62 paid by petitioner on September 23, 1952 to the Collector of Taxes of the District of Columbia under formal written protest in obeyance of a personal property assessment notice sent to petitioner by respondent, dated September 1, 1952.

2. That this Court make a finding that petitioner's personal property is exempt from the payment of District of Columbia personal property taxes by virtue of the provisions of 47 D. C. Code 1208, and has been in such category for the preceding three years.

4 3. That this Court grant any other relief which to this Court seems meet and proper.

NATIONAL WILDLIFE FEDERATION

By LLOYD F. WOOD

LLOYD F. WOOD, *Secretary*

* * * * * * * * * * *

5 Filed Jan 22 1953 District of Columbia Tax Court

* * * * * * * * * * *

FINDINGS OF FACT AND OPINION

The question here presented is whether the petitioner, a District of Columbia scientific educational corporation, is engaged in activities substantial and sufficient enough to exempt it from taxation on its personal property.

Findings of Fact

The petitioner is a District of Columbia corporation, with its principal office or headquarters at 3304 Fourteenth Street, Northwest, Washington, D. C. The petitioner is a federation, the constituent members of which are corporations, associations and groups throughout the United States who are engaged or interested in the protection of wildlife, the dissemination of information concerning it, and in the study of it, and related activities. Its purposes as expressed by its Constitution and By-Laws are as follows:

> "(a) To organize all agencies, societies, clubs and individuals which are or should be interested

in the restoration, conservation and scientific management of wildlife into a permanent, unified agency for the purpose of securing adequate public recognition of the needs and values of wildlife resources.

"(b) To develop a comprehensive program based upon scientific study and technical research for the advancement, restoration, management and conservation of wildlife.

"(c) To present to the public such pertinent facts, scientific and research discoveries and information as may contribute to the solution of the problem involved in the restoration and conservation of wildlife.

"(d) To cooperate with other conservation organizations in the western hemisphere and elsewhere.

"In furtherance of the foregoing objectives, the Federation is empowered to take such steps, engage in such activities and cooperate with the National and State governments and such other agencies, including scientific and technical research societies, as may be helpful or necessary to these aims. It may, for the development and furtherance of its program and activities thereunder accept donations of land, funds, and other aids, and it may hold title to property both real and personal."

Funds to carry on the activities of the petitioner are raised primarily from the sale of stamps depicting various flora and fauna of wildlife. The stamps are sold at $1.00 each. Six thousand persons in the District of Columbia purchased stamps this year.

In its office or headquarters in the District of Columbia the petitioner employs fifty-five persons, all of whom live in

the District. Its office furniture and fixtures on the tax day here involved, namely, July 1, 1952, was approximately $35,000, and its supplies consisting of books and pamphlets on wildlife and related subjects were approximately $30,000. Its film library cost approximately $7,500 and covers scientific and educational subjects about wildlife, conservation and the like.

The principal activities of the petitioner are the following:

It prepares and publishes twice a month a publication called "Conservation News", consisting of ten pages or more and with strictly educational and scientific content. It is mailed free of charge to about 5,000 persons and groups, 150 of which are in the District of Columbia. It also prepares, publishes and mails to the same persons and groups another publication called "Conservation Report" of educational and scientific content, and from time to time distributes to teachers and students free or at low cost, various papers and pamphlets on conservation that are of interest to such teachers and students.

The other activities of the petitioner as stated by its Secretary and found by the Court are as follows:

> "Well, we answer and refer to proper sources of information questions brought to us by other groups and organizations. We also service the various affiliated organizations which we have located in 45 states and send to them these materials which are requested. We have a staff of three individuals who spend most of their time answering these questions and sending this information out.
>
> 7 "Another function of the Federation is a field service. In this is employed a field director who travels through the United States and organizes as well as strengthens the present

affiliations with the National Wildlife Federation.

"Another function of the Federation is its administrative service which, through its non-paid officers, helps to supplement the information and cooperate with all of the other conservation organizations throughout the country."

* * * * * * * *

"Yes, they are full-time employes. I would like to add something, if I may, to our activities which I omitted, and that is the function of our education committee. The education committee, under the directorship of Dr. E. Lawrence Palmer, presents an educational program which is carried out by the Federation and helps to — —

"THE COURT: Is it in writing?

THE WITNESS: Excuse me?

THE COURT: Is the educational program in writing?

THE WITNESS: Yes. It carries out the educational program of the Federation.

THE COURT: Wait a moment. I don't think it is proper to discuss it if it is in writing. I don't know—it may be educational or it may not be educational.

By Mr. Imlay:

Q. Let me maybe clarify that. Do you have a program besides something contained in written documents that is for the purposes of education? A. We have a grant-in-aid program.

Q. Would you explain that, please. A. That grant-in-aid program is the encouragement of our organization to our affiliated organizations to present to us various local programs connected with the conservation of our natural resources and for which we pay three-quarters of the cost, based on a certain formula.

Q. By whom are these monies contributed? A. You mean—

Q. To support the educational program. A. For example, to any of our state affiliates which has a program that is approved by the education committee and an outside organization.

Q. I see. A. The education committee also grants fellowships, and this year four fellowships were granted to universities in the United States for various conservation programs. And the previous year I believe there were three fellowships. And we also have a program of scholarships."

8 The total expenses of the petitioner the six months ending June 30, 1952 were approximately $400,000 or $800,000 annually.

As of July 1, 1952, and since such date, the petitioner was a corporation the activities of which in relation to, or in the District of Columbia were as follows: Six thousand of the contributors to its operating fund were residents of the District of Columbia. The publications "Conservation News" and "Conservation Report" were sent free to One Hundred and Fifty persons and organizations in the District of Columbia. Other material consisting of pamphlets and articles relating to wildlife and related subjects were mailed free to a substantial number of persons in the District of Columbia. Educational and scientific books on wildlife and related subjects were available to persons, schools, colleges, and interested groups and organizations at reasonable cost. The petitioner maintained a comprehensive library of books on wildlife and related subjects in its headquarters at 3308 Fourteenth Street N.W., Washington, D.C. subject to use by residents and schools, colleges and other interested groups and organizations in the District. It has an excellent film library on wildlife, conservation and kindred subjects, with sound, which is available to groups and institutions in the District of Columbia, and so held out by the petitioner by notices in the local newspapers, of which a press release of November 20, 1952 is typical, and which read as follows:

"Washington groups and institutions wishing to schedule motion pictures on conservation and the out-of-doors may find new and interesting subjects in the film library maintained by the National Wildlife Federation. This is one of the educational services made possible by the thousands of citizens who use the Wildlife Poster Stamps distributed by the Federation.

"There is no rental charge for the films, but users are expected to pay postage or other transportation charges. This means that for groups able to call at Federation headquarters for the movies and return them in person, there is no charge. The address is 3308 Fourteenth Street, N. W. Telephone is North 4742.

"All are 16 mm. with sound. They are available to schools, garden clubs, Boy Scouts, Girl Scouts, sportsmen's clubs and other organized groups. Subjects range from documentary films on water pollution abatement, soil conservation and wildlife managements, to fishing and nature study."

The staff of the petitioner at its headquarters is frequently called upon to answer questions, or give in-
9 formation concerning wildlife, conservation and related subjects. Each week the petitioner issues what is called a "nature release" which is given free to all weekly newspapers, five of which are published in the District and use such releases. The petitioner contributes to the District of Columbia Community Chest. The petitioner maintains free of charge a display of posters depicting wildlife which is patronized by local persons. The petitioner makes available lectures, including its Art Director, Roger Tory Peterson, who upon request gives lectures to groups and organizations in the District of Columbia.

The petitioner has one constituent organization in the District of Columbia, namely, District of Columbia Wild-

life Federation. Its secretary is closely connected with the petitioner, and is also conservation director of the petitioner.

The petitioner has conducted displays of scientific material in schools and the like, and distributed free pamphlets to schools in the District of Columbia. The petitioner since July 1, 1952, supplied each junior and senior high schools in the District of Columbia with full color fish charts for use in science and biology studies. The petitioners donated stamps depicting wildlife and books and pamphlets on wildlife and related subjects to hospitals in the District of Columbia.

Several groups interested in the preservation of wildlife and kindred subjects such as garden clubs, Isaac Walton leagues and the like in one State, are combined into what is called a state "affiliate", in most instances called a "federation" such as, for instance, the District of Columbia Wildlife Federation. Such state affiliates or federations are the constituent members of the petitioner, the National Wildlife Federation, and each supply one member of the Board of Directors of the petitioner who meet once a year. In the interim the policy and affairs of the petitioner are carried on by the Executive Committee, which meets in the District of Columbia.

The petitioner, on the tax day here involved, was a scientific institution and was not conducted for private gain. On September 1, 1952, the Assessor assessed the petitioner a personal tax for the fiscal year ending June 30, 1953, in the amount of $1,764.62. On September 23, 1952 the petitioner paid such tax. This proceeding was filed on September 29, 1952.

10 *Opinion*

The petitioner claims exemption from personal property taxation under Section 47-1208 of the District of Columbia Code, 1951 Edition, which provides that—

"The following personal property shall be exempt from taxation.

"First, The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

" * * * * * * *"

The Court has found that the petitioner is a scientific institution incorporated under the laws of the District of Columbia and not operated for private gain. The petitioner, in assailing the tax here involved, has two strings to its bow. First, is a contention that regardless of any benefit or lack of benefit accruing to the District of Columbia or its residents from the conduct and operation of the petitioner, it is entitled under the plain language of the statute, to the claimed exemption. In other words, it denies the validity of the so-called "quid pro quo" theory. Second, is a claim that, regardless of the first contention, the petitioner's operation has resulted in benefit to the District of Columbia and to its residents.

In making its first point, the petitioner seems to ignore that language of Judge Miller in *District of Columbia* v. *Mt. Vernon Seminary,* 69 App. D. C. 251,254, 100 F. 2d. 116, reading as follows:

"The important consideration is that the school shall measure up to the standards of curriculum and pedagogy set by the Government. So long as it does there is no contention to the contrary in this case—it performs a function which must otherwise be performed by the Government and, consequently, comes within the reason for subsidy which is implicit in a tax exemption."

And the decision of the same distinguished jurist in *Hazen* v. *National Rifle Association,* 69 App. D. C. 339, 101 F. 2d 432, where he said:

> "For all these reasons, therefore, the necessity for governmental subsidy or immunity which is implicit in tax exemption—upon the theory that the Government is relieved of its burden—falls in the present case."

Nor does the petitioner give heed to the decision in *Lloyd Library and Museum* v. *Chipman,* 232 Ky. 191, 22 S. W. 2d 597, cited by Judge Miller in the above two cases, wherein is found the following:

> "Exemptions to charitable and educational institutions are bottomed on the fact that they render service to the state, and thus relieve the state and its people of a burden, which they otherwise have to assume."

This Court relied upon the foregoing decisions in its opinion in *Washington Chapter, American Institute of Banking* v. *District of Columbia,* Docket No. 1275 (now on appeal to the U. S. Ct. of App.) wherein it held that the taxpayer, although a school within the meaning of the statute was not entitled to an exemption, because it relieved the District of Columbia of no burden, to which decision the Court still adheres, and holds that the petitioner's first contention is without merit.

With respect to the second point made by the petitioner, namely, that in this case it does appear that benefit does accrue to the District or its people, that there is a "quid pro quo", it should be observed that this Court in 1941, then known as the Board of tax Appeals, held in *National Wildlife Federation* v. *District of Columbia,* Docket No. 354, that the personal property of the petitioner was then

not entitled to exemption from personal property taxation. In that case the then Board found that the activities of the petitioner in the District of Columbia was negligible, and that, applying the "quid pro quo" theory or principle, the petitioner had not shown that it relieved the District of any burden or rendered any benefit to the District. If the facts as found in that proceeding and in this were the same, the Court would have no hesitancy in applying the doctrines of res judicata or collateral estoppel [1] and hold the tax valid. But the fact is that the activities of the petitioner in the District of Columbia as of the tax day, and during the taxable period here involved are different and more extensive and substantial than those found for the earlier period, so much so and to such an extent as to the Court seem sufficient to support the exemption. For that reason the Court holds that the tax here involved, namely, a personal property tax for the fiscal year ending June 30, 1953, in
12 the sum of $1,764.62 was erroneously assessed and collected from the petitioner by the District and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of four per centum per annum from September 23, 1952, until the date of the payment of such refund.

Decision will be entered for petitioner.

Jo. V. Morgan

Jo. V. Morgan,
Judge

* * * * * * * * * *

13 Filed Jan. 22 1953 District of Columbia Tax Court

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[1] *Tait* v. *W. Md. R. Co.* 289 U. S. 620, 77 L. Ed. 1405, 53 S. Ct. 706; *Commissioner* v. *Sunnen*, 333 U. S. 591, 601, 602, 92 L. Ed. 898, 907, 908, See Also Note VI(a) page 932, 92 L. Ed. Following *Sunnen* case.

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court this 22nd day of January, 1953,

ADJUDGED and DETERMINED, That the personal property tax for the fiscal year ending June 30, 1953, in the sum of $1,764.62, was erroneously assessed and collected from the petitioner, and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of four per centum per annum from September 23, 1952, until the date of the payment of such refund.

Jo. V. MORGAN

Jo. V. MORGAN,
Judge.

* * * * * * * * * *

14 Filed Feb 6 1953 District of Columbia Tax Court

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MOTION TO VACATE DECISION AND FOR ENTRY OF DECISION IN FAVOR OF RESPONDENT

The respondent District of Columbia moves the Court pursuant to Rule 13 of the Rules of Procedure before the District of Columbia Tax Court to vacate the decision entered by the Court on January 22, 1953, in favor of petitioner and to enter a decision in favor of the respondent.

The grounds of this motion are as follows:

1. The Court erred in concluding as a matter of fact that petitioner's activities within the District of Columbia for the benefit of the District of Columbia were substantial in character.

2. The Court erred in entering a decision in favor of petitioner when petitioner failed, in accordance with its stipula-

tion at the hearing of this case, to present evidence to this Court respecting contributions to it by persons residing in the District of Columbia.

3. The Court erred as a matter of law in concluding that petitioner was entitled to exemption from personal property taxes in the District of Columbia.

* * * * * * * * * *

15 Filed Feb. 16 1953 District of Columbia Tax Court

* * * * * * * * * *

ORDER OVERRULING MOTION TO VACATE DECISION AND FOR ENTRY OF DECISION IN FAVOR OF RESPONDENT

Upon consideration of the motion of the respondent to vacate decision and for entry of decision in favor of respondent, and of the memoranda of counsel for the respondent and petitioner, in support of, and in opposition to, respectively, thereto, it is by the Court this 16th day of February, 1953

ORDERED, That said motion be and the same is hereby denied.

Jo. V. Morgan

Jo. V. Morgan,
Judge.

* * * * * * * * * *

EXCERPTS FROM TESTIMONY AND PROCEEDINGS BEFORE THE DISTRICT OF COLUMBIA TAX COURT

* * * * * * * * * *

Tuesday, December 2, 1952

The above-entitled matter came on for hearing before HONORABLE JO V. MORGAN, Judge, commencing at 10:00 a.m.

* * * * * * * * * *

19 PROCEEDINGS

* * * * * * * * * *

22 Whereupon—

LLOYD F. WOOD was called as a witness, and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. IMLAY:

* * * * * * * * * *

Q. All right. Now, will you state your official connection with the National Wildlife Federation. A. I am the secretary and business manager of the National Wildlife Federation.

Q. What is the business address of the National Wildlife Federation? A. The headquarters of the National Wildlife Federation is at 3308 14th Street Northwest.

* * * * * * * * * *

31 Q. All right. Now, what are your duties in connection with that position? A. As secretary of the Federation I am in charge of all the minutes and records of the Federation and as business manager I am in charge of the business function of the Federation.

* * * * * * * * * *

32 THE COURT: In the first place, we are concerned with geography and time. The geography is the District of Columbia and the time is the particular year

here involved of 1953—that is, the period from July 1, 1952 to June 30, 1953. Now, that is what we are concerned with.

MR. IMLAY: I will strike that and rephrase the question, then.

BY MR. IMLAY:

Q. Mr. Wood, what are the present activities of the office which you have testified is located here in the District of Columbia at 3308 14th Street Northwest? What are the present activities of that office?

MR. WIXON: Well, I will object to that, Your Honor, on the ground that the taxability is determined as of the tax date and not sometime in the future.

THE COURT: You mean during the present taxable period?

MR. IMLAY: That is correct, Your Honor—during the present taxable period. What are and have been the activities of the local office.

* * * * * * * * * *

33 THE COURT: I think the question is proper. First let us get what it does everywhere and let's then see what it does in the District of Columbia.

THE WITNESS: Well, one of the functions of the Federation is to publish a series of newsletters. One is entitled the "Conservation News" which goes free of charge to various organizations and individuals all over the country. Another is entitled the "Conservation Report." This also has the same geographic scope. In addition to this, we have a servicing division which functions as follows. Now, we print up and distribute free and at low cost various items of interest in the conservation field which are of interest to teachers and students—

* * * * * * * * * *

BY MR. IMLAY:

Q. Well, sir, in addition, now, to the issuing of the paper the Judge adverted to, could you tell me what some

34 of the other present-day activities of the office are.
A. Well, we answer and refer to proper sources of information questions brought to us by other groups and organizations. We also service the various affiliated organizations which we have located in 45 states and send to them these materials which are requested. We have a staff of three individuals who spend most of their time answering these questions and sending this information out.

Another function of the Federation is a field service. In this is employed a field director who travels through the United States and organizes as well as strengthens the present affiliations with the National Wildlife Federation.

Another function of the Federation is its administrative service which, through its non-paid officers, helps to supplement the information and cooperate with all of the other conservation organizations throughout the country.

The business office of the Federation—its function is to raise funds, and they raise funds through—principally through the publishing of wildlife conservation stamps, some of which are painted by a local artist and others by outside—

MR. WIXON: I object. That is immaterial.

THE WITNESS: All right.

THE COURT: You raise your money by the sale of stamps.

THE WITNESS: That is correct. And also by related materials such as albums in which to keep these
35 stamps, books on wildlife and other related items.

I think that just about gives the picture.

BY MR. IMLAY:

Q. Now, could you list the officers of your corporation.
A. The president is Claude D. Kelly of Atmore, Alabama. He is the president. The vice-president—there are three, one of which is Carl T. Frederick, 61 Broadway, New York City; another is Dean W. Davis, of West Plains, Missouri; and a third is Robert Miller of Spokane, Washington. The

secretary is myself, and the treasurer is Mr. Louis W. Wendt of Great Falls, Montana.

* * * * * * * * * *

36 BY MR. IMLAY:

Q. Let me maybe clarify that. Do you have a program besides something contained in written documents that is for the purposes of education? A. We have a grant-in-aid program.

Q. Would you explain that, please. A. That grant-in-aid program is the encouragement of our organization to our affiliated organizations to present to us various local programs connected with the conservation of our natural resources and for which we pay three-quarters of the cost, based on a certain formula.

Q. By whom are these monies contributed? A. You mean—

Q. To support the educational program. A. For example, to any of our state affiliates which has a program that is approved by the education committee and an outside organization.

Q. I see. A. The education committee also grants fellowships, and this year four fellowships were grant-

37 ed to universities in the United States for various conservation programs. And the previous year I believe there were three fellowships. And we also have a program of scholarships.

* * * * * * * * * *

38 Q. Now, what is done with the proceeds from the sale of these stamps? A. Well, the proceeds, after the campaign expenses are deducted, go for the program that I just outlined, carrying on our field services, our educational program, our servicing division activities, our film library and so on.

Q. All right. Now, getting down to your local activities, would you please outline your present—by present I mean

during the present tax period—your present activities of a local nature here in Washington, D. C. A. Well, first of all would be this conservation newsletter and report which I believe go to around 150 individuals here in the District of Columbia.

Q. Stop right there please, just a moment. You have spoken of the Conservation Newsletter. I hand you a sheaf of papers here and I would like you to identify those. A. Those are copies of the Conservation News which we publish free of charge. Do you want the dates on these?

* * * * * * * * * *

39 THE WITNESS: These are issued twice a month.

THE COURT: These have been issued since when?

THE WITNESS: I believe those have been issued in the past year.

MR. IMLAY: During the past year, Your Honor.

THE COURT: Well, of course, I can't stop you from identifying them. You can identify anything. Whether or not they are material, that is something else. I just hate to see the record cluttered up if they are not going to be introduced in evidence. However, let's identify those as Petitioner's Exhibit 4 with a letter identifying each one.

(The documents referred to above were marked for identification as Petitioner's Exhibits 4A through 4J inclusive.)

MR. IMLAY: I would like to offer those in evidence, Your Honor.

MR. WIXON: I object.

THE COURT: Well, now, before you do that, I want to understand from the witness what relation these letters have to activities in the District of Columbia. Now, do I understand that you have sent this letter to 6,000 people in the District of Columbia?

THE WITNESS: No, approximately 5,000 people around the United States and about 150 people in the District of Columbia receive them.

* * * * * * * * * *

THE COURT: Well, suppose you take out of the group the letters that were sent in this current year.

* * * * * * * * * *

41 BY MR. IMLAY:

Q. Mr. Wood, can you tell us to whom this Conservation News that has been received in evidence—to whom this publication is currently being sent?

42 MR. WIXON: Well, I object.

THE COURT: On what grounds.

MR. WIXON: As I understand the requirement here, it is whether the National Wildlife Federation is required to submit a return and be taxed upon its personal property for the fiscal year 1953 which commences as of July 1, 1952 and ends June 30, 1953. Now, the fact that some situation may have existed in 1951 or 1952 prior to July 1, 1952 or that some situation exists today which may be different than that on the tax dates is, as I see it, immaterial.

THE COURT: Well, the witness has testified, and I think it is clear, that these conservation newsletters were sent out during the present taxable year beginning July 1, 1952. Now, I think that is important.

MR. WIXON: Well, excuse me, sir, but my objection was to the question as phrased which, as I recall it, was to whom are these being sent today.

THE COURT: Well, I understood from the question that when he used the word "today," he meant the letters that we have before us which were manifestly sent during the taxable year.

Now, of course, it is understood Mr. Imlay, that we are talking about this taxable year.

MR. IMLAY: Yes, sir.

THE COURT: Now, with that in mind, I think that the question is proper to some extent, but it would be a great deal more satisfactory if you had your list of persons in the District of Columbia to whom the letter went.

THE WITNESS: We can obtain that if necessary.

* * * * * * * * * *

BY MR. IMLAY:

Q. Mr. Wood, do you have a list of persons in the District of Columbia to whom this Conservation News is directed? A. Yes, we have.

Q. Where is that presently? A. It is located at our headquarters office.

* * * * * * * * * *

Q. Mr. Wood, in addition to the Conservation News that you have testified to, could you please state other activities of the National Wildlife Federation during the present taxable period here in Washington, D. C. A. Well, a servicing division activity is—I won't say it is primarily a District function, but it is a substantial part of—a substantial part of it is. There is a staff of three that handles this particular division, one of whom spends a good deal of her time on the telephone answering questions from local residents on the subject of wildlife and its various parts.

THE COURT. What do you mean by that?

THE WITNESS: Well, somebody, for example, Your Honor, will call up and ask what to do about a squirrel that has been hurt and that they have in their backyard or something of the sort, and they want to know what to feed it or who to send it to in order to have it taken care of. The same with birds and other types of animals. Some people want to know what type of bird-

houses would be best to attract birds to their yard and what type of feed they would like. Others have questions on matters of pollution, particularly with reference to the Anacostia and Potomac Rivers.

MR. WIXON: Well, if Your Honor please, I understood that this employee answers those questions. I didn't understand that this witness answers those questions. And I don't see how—

THE COURT: Well, yes, he has testified, and I assume that it must be during this period of time because we have impressed on the witness that we are thinking and talking about the period beginning July 1, 1952—

MR. WIXON: Well, I am objecting to it on the ground that it is hearsay.

THE COURT: Well, I don't think it is hearsay. I think the witness can testify as office manager that these telephone calls are made and that the answers are given and information is given. I think that is proper.

BY MR. IMLAY:

Q. Will you continue, Mr. Wood. A. We also have in our headquarters office displays, one display of which is the art work that makes up the wildlife conservation
47 stamps. These have been on display in our office and people in the District can come in and see these and compare them with other works of art which we also have on file and examples of all the art work are shown around the office. In other words, each year's wildlife stamps are framed and hung in the office where they can be observed by individuals and students and so on.

We also have displays of all the material we distribute—of this Conservation Newsletter. We have various other publications and leaflets on conservation of our natural resources. And they can come in and obtain this material; if it is in small quantities, it is free of charge. Other material which we offer for sale can be obtained on an over-the-counter basis, and this material is also on display.

Once or twice a week we show motion pictures on conservation subject matter and the public is invited to come in at any time and view these.

The officers of the Federation are always on tap to give talks and lectures to various local groups on the subject of conservation or a particular subject that some organization may want. I cannot recall offhand, though, just how many of those were given in the last six months or since July 1, but nevertheless, the service is available.

We have completed a series of film strips which are also on hand in our office on forest fires, soil conservation and so on. Roger Torrey Peterson, who is a noted lecturer and author and artist, gives lectures from time to time as part of his duties as art director of the Federation.

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THE COURT: Where does he give the lectures?

THE WITNESS: He gives lectures at the places where these various groups meet. For example, the Audubon Society of the District of Columbia may want him for a lecture.

THE COURT: I am not concerned with what they may do. I am more concerned with what was done. How many times since July 1 has Mr. Peterson lectured to the Audubon Society?

THE WITNESS: I cannot tell you that offhand. I will have to check that.

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BY MR. IMLAY:

Q. Maybe you can go on and tell us, Mr. Wood, what your activities have been since July 1, particularly with reference to the period since July 1, 1952 to the present, in these categories you have mentioned. A. Well, on lectures, we have very few records on this, and I would have to confer with the other members of our staff and Mr. Peterson to determine just exactly how many

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lectures they have given. The other materials I spoke about are on display and available at all times. And I will obtain the dates that these motion pictures were shown and the subject matter of them.

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BY MR. IMLAY:

Q. Now, as far as physical equipment is concerned down there in your office, state what physical equipment you have there.

MR. WIXON: I object, Your Honor.

THE COURT: I will have to sustain that.

MR. IMLAY: Your Honor, I would like to have counsel state—

THE COURT: Unless it is a question of the evaluation of the property for taxation purposes.

MR. IMLAY: No, that is not at issue, Your Honor. We are trying to get just generally the physical make-up of the office because that is highly relevant.

50 THE COURT: I will overrule the objection for purpose as to prove you have facilities for giving service locally, such as an auditorium or motion-picture room or laboratories or what-not.

* * * * * * * * * *

THE WITNESS: We don't have special rooms for the purpose of motion pictures. We show them right in the office. And the equipment and everything of that nature which pertains to the showings is located at this premises. Now, we also have a research library which we feel is second to none in the conservation field which has been accumulated over the years that the Federation has been functioning, and at the present day represents probably one of the most outstanding research files available.

MR. WIXON: I object. I ask that all that—

MR. IMLAY: Let the witness finish the question before the objection.

THE COURT: I think he can testify that he has a fine library, an excellent library, and it is available there, if it is so. About its use he has not testified—but I think that throws some light upon the subject. I will overrule the objection.

BY MR. IMLAY:

Q. Could you state, Mr. Wood, how this library is
51 used? A. It is used primarily, of course, by our own staff members in making up their various reports and newsletters and so on—and also by many—that is very vague, too—individuals of whom we keep no record, who come in there from time to time and want to get further data on whatever subject they are interested in. As to pinning me down to the number of times it is used or anything of that sort, I am afraid I couldn't answer. It is just something we never felt occasion to keep a record of or anything of the sort.

Q. Are there any other contacts with the general public that you could describe, aside from what you have described here. A. Well, the schools of the District of Columbia call on us frequently for help. Recently a teacher in the Brightwood School wanted some materials from us to display at a sort of a Book Fair or something of the sort, and she came into the office and obtained materials to show down there as well as to sell. Recently we also gave to each of the schools in the District of Columbia one of the Federation's fish charts which shows various common fresh and salt water fish, so that—these were addressed to the principals of each of the schools in the District so they could give them to the science classes to put in the room for public information.

Occasionally there are references in the newspaper.

There was a column recently of Bill Gold—I can't
52 give the exact date, but I believe it was in the period we are talking about—

MR. WIXON: I object.

MR. IMLAY: Let the witness finish.

* * * * * * * * * *

THE COURT: He says he doesn't know. He thinks it is within this period of time, but he isn't sure. So I am going to sustain the objection.

BY MR. IMLAY:

* * * * * * * * * *

Q. Well, let's see—can you state whether or not there has been other publicity given the activities of the Federation locally? A. As part of the Federation's function, we send out news releases of various dates. This is usually two or three times a month. And this goes to all of the District newspapers, or newspapers which service the District of Columbia.

Another service which we have, which is issued
53 three times a month, is nature release bulletins, which are usually used by weekly newspapers. And offhand I cannot say how many use them within the District of Columbia, but I can obtain that information also. This information is distributed free of charge as a service to the weekly newspapers for the education of the general public.

MR. IMLAY: I have a document here I would like to get marked for identification.

THE COURT: That is Petitioner's Exhibit No. 5.

(The document referred to above was marked Petitioner's Exhibit No. 5 for identification.)

BY MR. IMLAY:

Q. Will you take that writing, Mr. Wood, and tell me whether you recognize that. A. This is a special release issued by the Federation with respect to motion pictures that we offer.

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54 BY MR. IMLAY:

Q. Will you further identify it.

* * * * * * * * * *

THE WITNESS: This special release is issued by the Federation—

THE COURT: Now, you say "is issued by the Federation." That apparently is something that was issued—isn't it?

THE WITNESS: Excuse me— was issued.

THE COURT: Well, why not testify that it was and when.

THE WITNESS: It was issued by the Federation on November 20.

THE COURT: 1952?

THE WITNESS: 1952.

THE COURT: What happened to it?

THE WITNESS: It was distributed to all the newspapers in the District of Columbia free of charge by mail. Generally these are not signed.

THE COURT: Do you still object to it?

MR. WIXON: I object to it.

55 THE COURT: I overrule the objection. It will be received in evidence. That is accepted as proof that on that day this press release was sent out to the local papers.

(The document previously marked Petitioner's Exhibit No. 5 was received in evidence.)

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56 BY MR. IMLAY:

Q. Now, you have spoken of the activities as regards wildlife. Are there other activities now that are carried on by the Federation here locally in the District or have been since July 1, 1952? A. I don't know exactly what you mean.

Q. Well, you have spoken of moving pictures now and the library. You have spoken of at least this one publication here, and the news release. A. Well, we donated to the Smithsonian Institution a piece of original art work for permanent display in that institution which has reference

to the lithographic process, and I believe that that is on exhibit at the present time or is being prepared for exhibit. I haven't been down there so I cannot tell you whether it is.

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57 MR. IMLAY: May it please the Court, there are quite a few documents here I would like to have marked for identification, and I thought perhaps that we might shorten things if we could just go right ahead and have them all marked at once.

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MR. IMLAY: They are various publications. Well, maybe Mr. Wood could summarize it.

THE WITNESS: These are publications some of which are offered for sale and others which are distributed free as part of our program.

THE COURT: Well, now, are they distributed generally throughout the United States?

THE WITNESS: Yes.

THE COURT: And in the District of Columbia?

THE WITNESS: Yes.

* * * * * * * * * *

58 BY MR. IMLAY:

Q. I show you these books here, Mr. Wood. Would you identify those books? A. These books are distributed by the National Wildlife Federation. Some of them are our own publications and others are publications of others but for whom we distribute them. These booklets here,

59 for example, entitled "My Land and Your Land Series" are published by the Federation for elementary grade schools.

THE COURT: Wait a moment. That doesn't mean very much. The books that you have before you are either published by the Petitioner or published by some other organization and distributed by you.

THE WITNESS: That is correct.

THE COURT: Either sold or free.

THE WITNESS: Not solely. But we do distribute them—but we are not the sole distributors of them.

THE COURT: Do you distribute them free of charge?

THE WITNESS: No.

THE COURT: You sell them.

THE WITNESS: Let's see. Of these books here, there are only two that are distributed free of charge and the rest are for sale.

THE COURT: Well, let's take the ones that are distributed free of charge and take them off separately.

THE WITNESS: These here.

THE COURT: All right. Now, the rest of the books that you have before you are all for sale.

THE WITNESS: That is correct.

THE COURT: Now, Mr. Wixon, these books have been offered in evidence. Do you object or not, or do you want to interrogate the witness on them?

* * * * * * * * * *

61 THE COURT: Well, let's get one thing at a time. They are sold generally throughout the country, is that correct?

MR. IMLAY: Is that correct?

THE WITNESS: Yes, that is correct.

THE COURT: Now, for that purpose they are received in evidence as books that are sold. Now, you have no objection to that.

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(The books referred to above were marked Petitioner's Exhibits Nos. 7-A through 7-AA inclusive and received in evidence.)

MR. WIXON: May I make an observation, Your Honor. It has been my understanding that the period in question here is always before us— in other words, that you are not

bringing in material or you are not offering material, Mr. Imlay, which relates to a period prior to the period here in question. I don't like to have to repeat that constantly.

62 THE COURT: Well, I think that is understood.

MR. IMLAY: Yes, that is understood.

BY MR. IMLAY:

Q. Mr. Wood, going to that point, state whether or not these books are being distributed presently, since July 1, 1952. A. They are being distributed within that period.

Q. I see. And how are they being distributed? I mean state whether or not they are being distributed for instance, by mail or by local purchase. A. Well, mostly they are distributed by mail through the parcel post system. However, lots of people—I wouldn't say lots of people—people come into our office and purchase them on an over-the- counter basis.

THE COURT: Well, how many?

THE WITNESS: We keep no record of that, Your Honor.

THE COURT: Well, don't you know how many people have come in since July 1—into your place? You don't know what books they have bought, either?

THE WITNESS: No—that is correct. We don't keep detailed information like that. We have detailed information on our sales as a whole, but specifically for the District of Columbia we don't pin it down to anything.

THE COURT: Now, what revenue do you get from those books?

THE WITNESS: Well, the revenue from these books—this set of books here, for example, we distribute

63 around 10,000 copies of these books annually. Now, in the last period that we are referring to, it would be around half of that.

THE COURT: Now, do you buy them at one price and sell them at another?

THE WITNESS: We buy them at $2.00 per copy, less the usual book discount, which is around 40 percent, and we sell them at $2.00. In other words, they cost us $1.20 for each $2.00 book. And out of the proceeds we have to pay our selling costs and wrapping and shipping and so on, and that leave (sic) us a small margin of income which goes to the Federation's activities.

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BY MR. IMLAY:

Q. You said that some are sold over the counter. How are they sold over the counter. Do you have a regular staff? A. People come in generally and look over our display, select the books they want, pay for them and take them with them. As for segregating those sales, we haven't been doing that and I could not tell you just—

Q. Have you actually seen some of these books sold? A. Yes, on occasions I have sold them myself.

THE COURT: Now, we are still talking about the present period. All right.

BY MR. IMLAY:

Q. Since July 1, they have been sold to people coming
64 into the Federation office, is that right? A. That is correct.

* * * * * * * * * *

65 MR. IMLAY: Now, I have some other publications here that I would like to offer for identification.

THE COURT: As I understand from the witness, these are pamphlets that are issued free of charge.

THE WITNESS: There is a qualification, Your Honor, in that they are distributed free of charge in reasonable quantities. If someone wants, say, 100 copies or more, then we charge a cost price for them.

* * * * * * * * * *

THE COURT: Now, have you any objection to these? They are sent out to each subscriber?

THE WITNESS: To interested individuals who request them.

MR. WIXON: You have to make a formal request in order to obtain this material?

THE WITNESS: Generally, yes.

MR. WIXON: They are not issued indiscriminately in the sense of being sent out without a specified or specific request for them.

THE WITNESS: That is correct.

MR. WIXON: And this material is current material.

THE WITNESS: Yes, sir.

MR. WIXON: Was it current as of July 1, 1952?

66 THE WITNESS: Yes, sir.

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(The documents previously marked Petitioner's Exhibits Nos. 8-A through 8-N inclusive were received in evidence.)

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68 BY MR. IMLAY:

Q. Would you please look at that and tell us what

69 it is, Mr. Wood. A. This is a complete collection of the wildlife stamps and albums since the beginning date of 1938 through 1952. The stamps are mounted in the albums. This is offered for sale by the Federation.

Q. Presently—since July 1? A. That is correct.

THE COURT: And it is the principal source of revenue.

MR. IMLAY: That is correct.

MR. WIXON: If Your Honor please, he says since July 1, 1952—since.

MR. IMLAY: It is being sold since—

MR. WIXON: But the point of it—the question here is the taxability of this organization as of July 1, 1952. Something since—it might be offered for sale as of today. That has nothing to do with it. I think we ought to understand that.

BY MR. IMLAY:

Q. Was it offered for sale before July 1 and on July 1, 1952? A. Yes, sir.

THE COURT: I don't think that we are bound by just what happens on that particular day. I think it is the tax year, and a lot of activities of this organization all couldn't have taken place on the first day of July. I don't know what is the purpose of this evidence. That is what concerns me.

MR. IMLAY: Yes. I wanted Your Honor to be
70 cognizant of the big activity which has been testified to—

THE COURT: Well, that is not an activity. That is just raising money.

MR. IMLAY: Well, yes, that is true. But I also wanted to develop that these stamps, besides the money-raising activity, are used for purposes of propagating the scientific conservation in the District of Columbia as well as elsewhere. It is a reminder to people, just the same way as war bond posters are as to war bonds, that conservation is an ever-present—

THE COURT: Well, you don't think the United States is doing anything for the man they sell the bond to—any benefit to him.

MR. IMLAY: No—I just used that as an advertising analogy. But here I think that the purpose of the stamp is very important—that is, that it is a reminder not only to the purchaser, but to other people who see the stamp that conservation is an important function here and that these people are performing it here in the District of Columbia.

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74 BY MR. IMLAY:

Q. Would you please, then, state any other activities which are pertinent or which have been engaged in by the Federation after July 1, 1952.

THE COURT: In the District of Columbia.

MR. IMLAY: In the District of Columbia.

THE COURT: Other than those you have already stated.

MR. WIXON: I object, Your Honor.

THE COURT: I will overrule the objection. That will not preclude you from moving to strike any testimony that is not pertinent. Go ahead, Mr. Wood.

THE WITNESS: In the District of Columbia there are very little fish and wildlife resources that we have to concern ourselves with because of its physical size.

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78 BY MR. IMLAY:

Q. Mr. Wood, state of your own knowledge what the activities of the Federation have been since the July period as regards the uses made of Mr. Shoemaker, meeting with other organizations, as you have said, or any other activities he is engaged in that you know personally of. A. Well, I know, for example, that Mr. Shoemaker is a member of the President's National Water Pollution Control Advisory Board, and as such a member he speaks for the Federation on matters of pollution.

MR. WIXON: Now, if Your Honor please, I am going to object to this on the ground that if there is such a board, then this Court may take judicial notice of its appointments and also that this man, if appointed, I presume, is appointed as an individual and not as a spokesman for any group. Consequently, the fact that he may make a statement as also a member of this particular Federation is immaterial.

THE COURT: I am going to sustain the objection.

MR. IMLAY: May I just say, Your Honor, that Mr. Wood here is speaking for the Federation and I was just trying to get the evidence in to show that the Federation has engaged in water pollution activities and I was trying

to get in how it engaged in them, and one way was
79 lending one of its members to an official pollution advisory board. Now, I think that is highly relevant, Your Honor.

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81 THE COURT: Do you have any objections? Those are pamphlets that are issued throughout the country free of charge?

MR. IMLAY: Yes.

THE COURT: Including the District of Columbia?

MR. WIXON: Except, as I understand it, when a request is made for a great number, when they charge them.

THE COURT: Yes.

MR. IMLAY: That is correct.

MR. WOOD: For a large quantity. Usually one hundred or more.

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82 (The publications referred to were marked "Petitioner's Exhibit No. 8-0 to 8-AA", inclusive and received in evidence.)

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MR. IMLAY: I am offering them for the purposes of showing this general subject matter that is being distributed. The truth or the falsity of the conservation statement therein, I do not vouch for.

THE COURT: That is understood.

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LLOYD F. WOOD

resumed the stand, and having been previously sworn, was further examined as follows:

CROSS EXAMINATION

83 BY MR. WIXON:

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84 Q. What is the total average sales in dollars value made by the Federation in a year as a consequence of the sale of these books which we have in group 7?

85 A. The books alone?

Q. Yes. The National Wildlife Federation. A. No, I can't give you that.

Q. How much, the amount, was sold during the last fiscal year, that is, fiscal year 1952? We are now in fiscal year 1953. Do you know that?

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THE WITNESS: I have some information for the six months' period ending June 30th, and also for the calendar year 1951. Our books are kept on a calendar year basis.

THE COURT: All right. What does the information show? He asked you what were the amounts for the six months ending June 30, 1952.

THE WITNESS: These books are headed, "For Accounting Records Under Miscellaneous Materials," which covers not only these books and pamphlets that we sell, but also the Wildlife Album, and things like that. It is grouped as a whole.

The total was $67,112.19 for that particular phase.

BY MR. WIXON:

Q. May I have that figure again? A. These con-

86 servation booklets, we had sales of $3,848.10.

THE COURT: That doesn't include the sale of stamps?

THE WITNESS: No, that does not include that. It is just for these other items.

BY MR. WIXON:

Q. Those two items you have given, those two figures you have given, comprise the total sales of all types of literature by this Federation? A. All types of literature?

Q. Yes. A. No. Our total income was $419,487.69.

Q. Is that from the sale of literature? A. That is from the sale of our stamps, albums, and all of our literature.

Q. How much was the sale of stamps? A. The stamp sales was $287,102.

THE COURT: That is for six months?

THE WITNESS: Yes.

BY MR. WIXON:

Q. Now, the total for six months I understand to be $419,-487.69; is that correct? A. That's correct.

Q. And the sales of stamps netted or resulted in the receipts of $287,102; is that correct? A. That's correct.

87 Q. So that the difference between the first figure, that is the total figure, and the figure of $287,102—is that the difference, the amount realized from the sale of the material? A. That's correct.

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88 Q. Now, I believe you stated that you have a number of publications which you put up. For example, you put out a newsletter to representatives all over the country; is that correct? That's right.

Q. Now, how many copies of that newsletter are issued at each issue? A. Approximately five thousand.

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Q. How many of those go into the District of Columbia? A. Approximately 150.

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89 Now, what other publications are issued as a matter of course besides this newsletter? Do you have any other publications which you issue as a matter of course from time to time such as the conservation newsletter? A. Yes. There is another report that we get out entitled "Conservation Report."

Q. How often do you get that out? A. That varies, depending upon the particular activity. It is a resume of the bills entered in Congress pertaining to natural resources.

Q. How many of those are published by the Federation at each issue? A. While Congress is in session, I believe there is at least one a week.

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91 Q. Now, I believe you testified that you have 55 full-time employees in the District of Columbia. A. That's correct.

Q. And that three of these employees are concerned with District of Columbia matters; is that correct, sir? A. I wouldn't say that, sir.

92 Q. That wasn't your testimony on direct? A. These three people?

Q. Just a minute. Was that your testimony on direct?

THE COURT: He said no it wasn't.

MR. WIXON: That is all I wanted, just that answer.

BY MR. WIXON:

Q. Now, how many employees do you have who spend their full time working on District of Columbia matters and no other, if you know?

THE COURT: He doesn't mean working within the District of Columbia, but for the benefit of the District of Columbia; isn't that correct, Mr. Wixon?

MR. WIXON: Yes.

THE WITNESS: I don't believe we could say that we have any that work solely for the benefit of the District of Columbia.

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93 THE COURT: All your employees are for the purpose of the general activities?

THE WITNESS: That is correct.

BY MR. WIXON:

Q. Now, how much of the total revenues of the Federation during a one-year period are expended solely on behalf of the District of Columbia, or District of Columbia matters?

THE COURT: If he knows.

MR. WIXON: If he knows.

THE COURT: Yes, sir.

THE WITNESS: How much of our income is expended for District of Columbia matters? I couldn't say.

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98 BY MR. WIXON:

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Q. What was your total expenditures for the six months period ending June 30th, 1952? A. The total business expenses were $308,672.60. There were additional expenses for these various divisions totalling $72,484.93. For distribution to our affiliated organizations, $18,913.87.

Q. Is that the total, sir? A. Yes, sir.

* * * * * * * * * *

Q. Now, the affiliates have $18,913.87. What affiliates do you mean? A. There were approximately 22 affiliates who received approximately $900.

Q. Wait a minute. Nine hundred dollars each? A. Yes.

Q. How much of those are located in the District of Columbia? A. None.

Q. Of the $72,484.93, which you said was disbursed to organizations— A. Divisions.

* * * * * * * * * *

Q. (Continuing)—what divisions do you have in mind? What do you mean by that? A. One is the servicing division. Another is our administrative division. Another is for the newsletter and public relations activity. Another is our conservation division.

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Q. Where is the Field Service located? A. The Field Service is located—has its headquarters here in Washing-

ton, and the director is on the road constantly. His home is in Springfield, Missouri.

Q. He just travels from state to state? A. Yes.

Q. Does he provide conservation assistance to all the states? A. Yes.

Q. And the Territories? A. Yes.

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Q. Now, do you have any knowledge as to how much of the $72,484.93 disbursed by your organization within the framework of the organization to divisions was used
101 or disbursed by the divisions for the District of Columbia activities as such? A. I have no way of ascertaining that.

Q. Of the $308,672.60 which you say you disbursed for business expenses, do you have any knowledge as to the amount or rather the portion of that amount which was disbursed for District of Columbia purposes as distinguished from national purposes? A. Yes. Those concern the expenses in the operation of our office here in the District of Columbia, of which are our paid employes, taxes, and other expenses pertaining to our office rents, and so on. If you want me to, I will list those.

THE COURT: Does it include printing?

THE WITNESS: Some printing. Some of it is done outside of the District of Columbia.

THE COURT: Printing of books?

THE WITNESS: Printing of books, printing of promotional literature.

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102 Q. I am not speaking now of that. How many of that— how much of that money was used for District of Columbia activities such as giving a lecture, showing a movie picture, if you have any knowledge? If you do not, just say so. A. I don't know.

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103 Q. With respect to the movies, you said you show those once or twice a week? A. That's right.

Q. To whom do you show these movies? A. To the employees.

Q. Of the organization? A. That's correct.

Q. You did not mean to give the impression on direct examination that you were showing these movies for the public? A. No. But there are occasions when the general public is present.

Q. Now, let's say you have some lecturers available, lecturers who are connected with the Federation. A. They only give lectures within the scope of their profession. There is Roger Tory Peterson.

* * * * * * * * * *

104 Q. How are these lecturers made available? A. Usually on request of an organization.

Q. Is there any standard procedure, any fixed procedure of the Federation for giving a lecture at a stated time within the District of Columbia? A. No, sir, there is not.

Q. There is only a procedure for giving—making available a lecturer if requested? A. That's correct.

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107 Q. Now, can you become a member of the National Wildlife Federation? A. No; we are not a membership organization.

Q. Can you become affiliated with—as a member of a group? A. Yes.

Q. That is, interested in conservation? A. Yes.

Q. Does the club, or organization, or group, become a member of the National Wildlife Federation? A. An individual club will generally become a part of our state affiliate, and the state affiliate is usually made up of a group of local groups of clubs, and those clubs range all the way from garden clubs and civic groups down to sportsmen's organizations, and so on.

Q. Let me ask you this question. Can you state the percentage of time of your employees which is devoted to purely District of Columbia matters, functions?

108 A. No, I cannot.

Q. Is it a small or large part? A. I would say that was a small part, but not insubstantial.

Q. As a matter of fact, isn't it true that you, the Federation, is concerned with the conservation and wildlife control problems of the whole United States of America? A. That's correct.

Q. And its possessions; and that it is not concerned essentially or solely with the District of Columbia conservation problems because there isn't any real conservation problems in the District of Columbia?

MR. IMLAY: I object.

THE COURT: He is asking a question. I think he can answer the question.

MR. IMLAY: It is a negative approach. It is full of clauses. I don't know that there is not any conservation problem in the District of Columbia.

MR. WIXON: It doesn't make any difference, Mr. Imlay, whether you know it or not.

MR. IMLAY: Your question assumes a—

MR. WIXON: Mr. Imlay, you seem to forget that this is cross examination.

MR. IMLAY: I am not going to argue with you, Mr. Wixon.

THE COURT: I will overrule the objection.

109 MR. WIXON: All right, sir. Go ahead and answer it, Mr. Wood, if you can.

* * * * * * * * * *

THE WITNESS: I wouldn't say, sir, that we do not have any conservation problems, but that is due to the physical layout of the District of Columbia.

BY MR. WIXON:

Q. There is not hunting here, is there? A. No.

Q. There are no wild animals such as deer in the District of Columbia, are there? A. Not that I know of.

Q. As a matter of fact, this is a metropolitan area; isn't that true, sir—a large city area, and there is no available space for wildlife as such? Is that not true? A. Not the large species that you mentioned, no. But there is fish life in the District of Columbia as noted by the number of people who fish in the Potomac River.

Q. How much of the time of the Federation is devoted to fish in the Potomac? A. I don't know.

Q. As a matter of fact, isn't it an insignificant portion of the total time devoted by the Federation to its
110 activities. A. I don't know. Mr. Shoemaker could best answer that. He has been the most closest one associated with it.

Q. What other activities of a wildlife conservation feature are involved in the District of Columbia by the Federation? A. Each year we sponsor National Wildlife Week. In the past this comes before this period we are talking about.

The National Wildlife Week falls in the month of March. Usually, a particular subject of wildlife specie which is threatened is brought to the attention of all the people including the citizens of the District of Columbia.

Q. It isn't meant by that, sir, that there is a specie of wildlife which is threatened within the District of Columbia, does it? A. There are species; yes, sir.

Q. Will you name them? A. The eagle.

Q. The eagle? A. Yes, sir.

Q. The eagle is also threatened, I suppose, throughout the 48 states? A. That's right.

Q. As a matter of fact, aren't you primarily concerned with the eagle outside the District of Columbia
111 .rather— A. The eagle as a whole.

Q. How many eagles are found within the District of Columbia? A. I don't know.

Q. Do you know? A. I don't know.

Q. Would it be a major or small number? A. Judging from the amount of eagles all over the country, it would be small.

Q. And your eagle programs—that is designed to acquaint or to educate the public so that when it gets to wildlife outside the confines of the District of Columbia, it will be in a position to know proper methods of conservation; isn't that true? A. That's correct. As you know—

* * * * * * * * * *

The Witness: (Continuing) As you know, there is not hunting in the District of Columbia. However, many District of Columbia citizens go to Virginia and Maryland for their activities. We have affiliates in each of those states, and through those organizations we try to help benefit the
District of Columbia citizens in their pursuit of
112 their particular recreation.

BY MR. WIXON:

Q. You are also interested in conserving the deer and other wildlife in the states of Virginia and Maryland, are you not? A. That's right.

* * * * * * * * * *

116 BY MR. WIXON:

* * * * * * * * * *

Q. Is there any officer of the Federation who is a local individual in the sense that he is active or his interest is devoted to the District of Columbia, not merely that he
has come here as an officer from some other state?
117 Is that clear to you, sir? A. Not exactly.

Q. I don't want an officer who is elected and has come to Washington because he was elected from the State of Maine, and whose activities are here because he has to be here to attend to the business. Is there any officer who is a local officer as such? A. Mr. Shoemaker is the secre-

tary of the District of Columbia Wildlife Federation. He is a representative of this area.

Q. His is merely an affiliation? A. That's correct.

Q. There is no officer of the Federation, the national organization, who is a local individual and who became an officer locally in the sense of being elected?

THE COURT: Like a bank president who lived here all the time and took an interest in the association or organization and became connected with it, or a head of a corporation, or minister, or doctor.

THE WITNESS: No.

BY MR. WIXON:

Q. All of them are from outside of the District of Columbia; is that not true? A. That's right.

Q. Now, do you have meetings? Does the Federation have meetings? A. Yes.

* * * * * * * * * *

Q. And what do you treat at those meetings, problems of the conservation throughout the United States? A. Problems of conservation throughout the United States, and the operations of the organization here at the headquarters.

Q. That is, the financial and business operation? A. That's right.

Q. You are not speaking of the District of Columbia affiliation? A. No, sir.

* * * * * * * * * *

BY THE COURT:

* * * * * * * * * *

Q. Well, now, your organization is really a Federation; isn't it? A. That's correct.

Q. It is made up of organizations from the various parts of the country? A. Yes.

Q. State organizations? A. Yes.

* * * * * * * * * *

122 Q. Lets take the question of pollution. Let's take the problem of the pollution of the Potomac, and it was so that it was decided that something should be done about it by the Board of Directors. They have a meeting and take action, if it were favorable to clean up
123 pollution. A. They submit a resolution.

Q. What would they do? A. Make up a resolution, and I as secretary for this organization forward copies of these resolutions to the various parties concerned.

Q. Let's take the District of Columbia—to whom would you send your message? A. To the people concerned with pollution. The Health Department. The District of Columbia Commissioners.

Q. What yould you tell them? A. Just state that—

Q. You thought something ought to be done about pollution? A. That's right.

* * * * * * * * * *

125 Q. How many people come up to the movie pictures in the office there from the outside? A. Each time they are shown we don't make any public announcements of the fact, generally.

MR. WIXON: I believe the testimony is that it is for the office staff but the public may be there.

THE COURT: I understand. The public may come in, but it is incidental if anyone comes; don't you think?

THE WITNESS: It is.

* * * * * * * * * *

128 THE COURT: Mr. Imlay, may I ask what is the purpose of this question? We are not here to determine the taxability or non-taxability of the local organization.

MR. IMLAY: That is true. Your Honor, I am trying to develop that the local organization is not—I do not believe is an entity in itself. It is part of this national organiza-

tion. It is the local phase of the national organization. This is a very crucial point.

THE COURT: He says they have 45 state affiliates or affiliate organizations, and they in turn are federated by making it into a Federation of Wildlife Association. The District of Columbia is one. The State of Maryland probably has one, and so forth.

MR. IMLAY: Yes.

THE COURT: Why is the District of Columbia
129 part of it other than merely a constituent?

MR. IMLAY: I am trying to show that this national organization has a local function as opposed to its national—

THE COURT: No more local function in the District of Columbia than it does in Maryland.

MR. IMLAY: Maryland has its own affiliate.

THE COURT: So does the District of Columbia.

MR. IMLAY: The District affiliate, though, meets in and uses this property that is the subject of taxation.

THE COURT: Nothing magical about that. It also uses the Cosmos Club property. It is not connected with that.

* * * * * * * * * *

131 BY MR. IMLAY:

Q. State what sources are recipients of these various publications here that you personally know of here in the District of Columbia?

MR. WIXON: If your Honor please, does this mean the sales? We have been over that.

MR. IMLAY: I mean the free distribution. I will limit it to that.

THE COURT: He has already testified that he did not know. That is my recollection. He testified with respect to the newsletter that about 5,000 were sent out, generally, and his statement or estimate was 150 in the District of Columbia, and the other publication he guessed was about 100, and he couldn't tell.

BY MR. IMLAY:

Q. Are there other pamphlets here, some of these other pamphlets that— A. These other pamphlets are distributed to the schools of the District of Columbia, and in cases where they request a number of copies for classes, we supply those. If the requests go over 100, then we ask them to pay the nominal cost of such material.

* * * * * * * * * *

132 Q. State how big a segment of your material is available?

THE COURT: To the whole District of Columbia?

MR. IMLAY: Everybody in the District of Columbia?

THE WITNESS: Everyone, every organization.

BY MR. IMLAY:

Q. And the facilities of your offices?

A. They are also open to any individual or organization that cares to use our facilities.

* * * * * * * * * *

134 JOHN ASHLEY BROWNRIDGE was called as a witness by counsel for the Petitioner and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * *

138 Q. What particular duties have you performed in behalf of the schools in the District of Columbia?

THE COURT: Since the 1st of July.

THE WITNESS: The most immediate one that comes to my mind—we have given to each of the junior and senior high schools in the District of Columbia a full-color fish chart depicting the 30 common fresh water fish of North

America. These are to be used in their science or biology departments. Besides that, specifically, specific instances, I cannot think of.

* * * * * * * * * *

BY MR. IMLAY:

Q. Have you done anything else for the schools besides these fish charts, to your knowledge, since the 1st of July? A. We have sent to all of the science teachers of America, which will include all the science teachers in the District of Columbia, a complete packet of our service division material.

THE COURT: Complete what?

THE WITNESS: Complete packet of the material we have available for free distribution, which includes the pamphlets that we distribute on natural and wildlife.

THE COURT: By "packet" do you mean a group of pamphlets?

THE WITNESS: That is right.

THE COURT: Everyone that you have available you send to each teacher in the United States, or do
139 you just have a list?

THE WITNESS: To the science teachers.

THE COURT: Everyone?

THE WITNESS: Yes.

THE COURT: There has been introduced into evidence a large number of pamphlets which have been designated as Exhibit No. 8. Do I understand that you send everyone of those pamphlets to every science teacher in the United States?

THE WITNESS: To all the teachers who are on the National Science Teachers' Association list. The National Science Teachers' Association is a group organized here in the District of Columbia which represents—I won't say they represent every science teacher, but those who belong

to the National Science Teachers' Association receive our packet of free material.

* * * * * * * * * *

THE COURT: You do not know how many teachers in the District of Columbia are on that list?

THE WITNESS: No, sir. I cannot state that.

* * * * * * * * * *

141 BY MR. IMLAY:

Q. Does your organization have anything to do with trees?

MR. WIXON: I object.

MR. IMLAY: Your Honor, that is a question that is very pertinent to the nature of the organization. It is a scientific activity in the District of Columbia.

THE COURT: Go ahead and answer the question, if you understand it. I do not. Do you have anything to do with trees?

BY MR. IMLAY:

Q. The study of trees, the botany of trees? A. Well, we are, of course, interested in all forms of wildlife which includes trees. We are most interested in the preservation of trees, protecting them both from dis-

142 ease and from forest fires. We do a great deal of work along those lines in an educational way with our work letters, and through many of the other books that we have.

Now, we also during the times of forest fires publish warnings to the public about the dangers of dried up forests, and so on.

THE COURT: You do that with flowers, bees, and everything else.

THE WITNESS: Yes.

* * * * * * * * * *

BY MR. IMLAY:

Q. Do you do it in connection with things located in the District of Columbia?

MR. WIXON: I object.

THE COURT: I don't know what the witness is going to answer. I will overrule the objection. Go ahead.

THE WITNESS: As I say, we are interested in all wildlife, whether it is local or otherwise. If there is a disease of a certain tree, we are most—

THE COURT: The point is: Do you know of any forest fires that you warned about in the District of Columbia?

THE WITNESS: Not in the District of Columbia.

THE COURT: Or any trees or disease?

THE WITNESS: There has been a Dutch elm plague in the District of Columbia.

143 THE COURT: What have you done with respect to the Dutch—

THE WITNESS: In the period under question—nothing.

BY MR. IMLAY:

Q. Besides the servicing activities, could you describe any other activities that you have participated in? A. Each year—

MR. WIXON: May I ask—is this general or local?

MR. IMLAY: This is general.

THE WITNESS: (Continuing)—we do have a number of our wildlife stamps returned through the mails which are not suitable for distribution, further distribution, and we have given these to a number of local charitable organizations among whom were the Blue Plains, Childrens Hospital and Gallinger Hospital. We also have given each of these organizations a considerable amount of material such as these books that are slightly damaged. On two occasions this year we have gotten a supply together and split it among three hospitals and—Gallinger, Childrens, and the other one was outside of the District of Columbia. It is the Anderson Clinic.

THE COURT: How substantial has been that donation?

THE WITNESS: I would say the retail value would run to about $200.

BY MR. IMLAY:

Q. Aside from those two functions, can you describe any other functions that you participated in—the Fed-
144 eration? A. Not within that period specifically, I cannot.

Q. Has the organization been active since the period began, since July 1st? A. We have been most active. Our servicing division has been exceptionally busy almost all the time.

MR. WIXON: I object. This is irrelevant—whether they have been busy or not.

MR. IMLAY: Their activities are the very crux of the matter, your Honor.

THE COURT: Now comes one of these so what questions. The research department or the service department or whatever you call it has been active. So what?

MR. IMLAY: What I am trying to develop, your Honor, it is very difficult to allocate to the local functions certain percentum or certain quantitative or qualitative part of their total activities.

I am just trying to develop that there is this duality of function here. I am questioning the witness—

THE COURT: Being busy doesn't mean anything. What I am concerned with is, what do they do? What do they do, generally? What do they do within the District of Columbia.

I can appreciate appreciate (sic) as well as you can that lots of time you just can't allocate things to the District of Columbia. For instance, a lot of general expenses and over-
head, and things of that nature. Saying you are
145 busy, doesn't mean a thing.

BY MR. IMLAY:

Q. What does your local office do with relation to this particular locality of the District of Columbia?

* * * * * * * * * *

THE WITNESS: The servicing division answers a great many requests. I should say on the average of about 15 to 20 every day.

THE COURT: On the telephone?

THE WITNESS: On the telephone.

THE COURT: Do you know where the telephone calls come from? You couldn't distinguish these calls from whether they were from Bethesda or Maryland?

THE WITNESS: That's right.

* * * * * * * * * *

THE COURT: What is the nature of the requests?

THE WITNESS: One specific question that I can think of is, "How do I get rid of owls from my chimney? What do I do about starlings that are bothering us? I have got a sick bird that my child brought in. What do I do to
146 feed it? How do I care for it? I have got a tree that is withering, an elm tree, what do I do about it? Where do I go to find out? I have seen a certain type of bird in my back yard. I don't know just exactly what it is."

They will describe it. You are supposed to tell them what it is.

* * * * * * * * * *

BY MR. IMLAY:

148 Q. State whether or not you have any personal knowledge of how much of the total gross activity
149 of the organization can be allocated to the District of Columbia?

THE COURT: If you know.

THE WITNESS: I can't tell you exactly.

* * * * * * * * * *

155 THE COURT: Let's move along. Let's go back to the question. The witness is prepared to make an estimate of what he thinks the whole activity, what part of the whole activity, may be reasonably allocated to the District of Columbia. It is an estimate and only an opinion.

THE WITNESS: Our mailing lists as of July 1st was 521 thousand. Of those 521 thousand, 831 were residences of the District of Columbia, which is approximately one percent of our total mailing list.

THE COURT: When you say "mailing lists," you don't mean the newsletters?

THE WITNESS: No. He asked me our business—how much of the business, and how many of our contributors.

THE COURT: That is what you call a mailing list?

THE WITNESS: Yes.

THE COURT: But you do not perform any service for them except to take their dollar from them?

THE WITNESS: The service is available to everyone.

THE COURT: I understand that. You do not supply a service to every many (sic) who pays you a dollar?

THE WITNESS: Not every man.

* * * * * * * * * *

156 BY MR. IMLAY:

Q. In addition to the servicing and these local distributions, do you personally have any other function currently with the Federation—any other duties? A. Well, I am available for showing of motion pictures, or for giving lectures, talks, anywhere that is required. So far in the District of Columbia I have not given any.

We have shown motion pictures in our office. The latest one was last Tuesday, at which time we showed two pictures. One on moose and one on trout fishing. They are available free of charge to anyone who wishes to come and see them.

* * * * * * * * * *

CROSS EXAMINATION

BY MR. WIXON:

Q. Do you advertise that you are going to show
157 these pictures? A. No, we do not.

Q. Anyone who came in could casually walk in. A. Yes. The last time we had three outsiders.

Q. You didn't mean to give the impression that you had persons who were coming from all over? A. No, sir.

* * * * * * * * * *

163 Q. Now, I think you said you gave away to charitable organizations in Washington stamps which were returned and were no longer usable; is that right? A. That's right.

Q. When you say "no longer usable," what do you mean? A. Well, we will not send a stamp, a sheet of stamps, on which any one stamp has been damaged, creased, or folded in any manner, or bent, just folded in the wrong
164 place. We will not use it in our mailing program. We call them slightly shop worn.

Q. They have, so far as the Federation is concerned for its purposes, no further value? A. That's right.

Q. And you gave that material of no further value away to the various organizations you named. A. As to no further value, it would have salvage value through stamp dealers.

* * * * * * * * * *

Q. How many places did you give it to? A. I cannot give you the exact number. I cited some specific instances. Gallinger. Childrens. Blue Plains. Some of the orphanages around town. That also I can find for you and get for you.

Q. How many sheets did you give away; do you know that? A. They could request any number from 50 up to 1,000 or more if they wanted them.

Q. Do you know how many were given away? A. I do not know.

* * * * * * * * * *

165 Q. Now, you gave, I think you said, out a chart showing some fish. A. The 30 most common—

Q. How big a chart was that? A. 28 by 42 inches.

Q. How much were they worth? A. About $2 each.

Q. Each? A. Each.

Q. Retail? A. Retail.

Q. How many schools got them? A. Twenty-six.

* * * * * * * * * *

DOCKET ENTRIES

September 29, 1952	Petition filed
December 2, 1952	Proceedings held
January 22, 1953	Findings of Fact and Opinion filed
January 22, 1953	Decision filed
February 6, 1953	Motion to Vacate Decision and for Entry of Decision in Favor of Respondent filed
February 16, 1953	Order Overruling Motion to Vacate Decision and for Entry of Decision in Favor of Respondent filed
February 20, 1953	Petition for Review filed
March 12, 1953	Statement of Points on Review filed
March 12, 1953	Designation of Record filed
March 24, 1953	Order for Delivery of Original Exhibits filed

BRIEF FOR PETITIONER

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

For the
District of Columbia Circuit
FILED AUG 14 1953
Joseph W. Stewart
CLERK

No. 11,754

DISTRICT OF COLUMBIA, *Petitioner,*

v.

NATIONAL WILDLIFE FEDERATION, *Respondent.*

On Petition for Review of a Decision of the District of Columbia Tax Court

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QUESTIONS PRESENTED

1. Whether an organization incorporated in the District of Columbia for the purpose of conserving the wildlife resources of the North American Continent, and whose activities in the District of Columbia are only incidental, is entitled to subsidization by the District of Columbia through exemption from personal property taxation.

2. Whether an organization devoted to the conservation and restoration of wildlife resources of the North American Continent which does not relieve the District of Columbia from any of its burdens of government, and whose activities only remotely and incidentally affect the District of Columbia, is entitled to exemption from personal property taxation in the District of Columbia.

3. Whether evidence of respondent's activities subsequent to July 1, 1952, was properly admitted and relied upon by the District of Columbia Tax Court for the purpose of a determination of respondent's right to exemption from personal property taxation when liability for such taxes is fixed by statute as of the first day of July of each fiscal year.

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Cases Cited

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Galloway v. *United States*, 319 U. S. 372, 87 L. Ed. 1458, 63 S. Ct. 1077	30
Government Services, Inc. v. *District of Columbia*, 88 U. S. App. D. C. 360, 189 F. 2d 662	16
Gunning v. *Cooley*, 281 U. S. 90, 74 L. Ed. 720, 50 S. Ct. 231	31
Hazen v. *National Rifle Association*, 69 App. D. C. 339, 101 F. 2d 432	16
Hebrew Home for the Aged v. *District of Columbia*, 79 U. S. App. D. C. 64, 142 F. 2d 573	17, 34

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Howard University v. *District of Columbia*, 81 U. S. App. D. C. 40, 155 F. 2d 10 ..... 29, 30
Jabert Operating Corp. v. *City of Newark*, 16 N. J. Super. 505, 85 A. 2d 216 27
Koppers Co. v. *Securities and Exchange Commission*, 78 U. S. App. D. C. 151, 138 F. 2d 577 31
Liverpool and London and Globe Insurance Co. v. *Nebraska Storage Warehouses*, 96 F. 2d 30, 36 30
M. F. Ham Evangelistic Assn. v. *Matthews*, 300 Ky. 402, 189 S. W. 2d 524 18
Magruder v. *Supplee*, 316 U. S. 394, 86 L. Ed. 1555, 62 S. Ct. 1162 28
Martin County v. *Drake*, 40 Minn. 137, 41 N. W. 942 ..... 27, 28
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Mercury Press, Inc. v. *District of Columbia*, 84 U. S. App. D. C. 203, 173 F. 2d 636 27
Moore v. *Chesapeake & Ohio Ry. Co.*, 304 U. S. 573, 95 L. Ed. 547, 71 S. Ct. 428 30
Norton Co. v. *Department of Revenue of Illinois*, 340 U. S. 534, 95 L. Ed. 517, 71 S. Ct. 377 ..... 17, 34
Orthodox Hebrew Board of Education v. *Tax Commissioner of Ohio*, 155 Ohio St. 380, 98 N. E. 2d 834 27
Parlton v. *United States*, 64 App. D. C. 169, 75 F. 2d 772 30
People v. *Ladies of Loretto*, 246 Ill. 403, 92 N. E. 908 28
Spund v. *Myers*, 67 App. D. C. 135, 90 F. 2d 380 30
Stevens v. *The White City*, 285 U. S. 195, 76 L. Ed. 699, 52, S. Ct. 347 31
Tumulty v. *District of Columbia*, 69 App. D. C. 390, 102 F. 2d 254 27
United States v. *Certain Parcels of Land*, 61 F. Supp. 164 28
Washington Chapter of American Institute of Banking v. *District of Columbia*, ___ U. S. App. D. C. ___, 203 F. 2d 68 16
Washington Gas Light Co. v. *Biancaniello*, 87 U. S. App. D. C. 164, 183 F. 2d 982 32
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STATUTES CITED

Section 6, Paragraph 10 of the Act of July 1, 1902, 32 Stat. 590, 620, ch. 1352 11
Sec. 6 of the Act of February 18, 1929, 45 Stat. 1226, 1227, ch. 259 ..... 11, 26, 27
Sections 3 and 4 of Title IX of the Act of August 17, 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223 2
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Act of June 3, 1896, 29 Stat. 244, ch. 315, as amended by the Act of April 1, 1926, 44 Stat. 229, ch. 98 ---- 18
Act of August 3, 1951, 65 Stat. 155, ch. 292 ---- 18
District of Columbia Code, 1951 Edition:
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MISCELLANEOUS AUTHORITIES

House Report No. 167, 81st Congress, 1st Session, in connection with appropriation bill for fiscal year 1950 ---- 29

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,754

DISTRICT OF COLUMBIA, *Petitioner,*

v.

NATIONAL WILDLIFE FEDERATION, *Respondent.*

On Petition for Review of a Decision of the District of Columbia Tax Court

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BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This is a proceeding to review a decision of the District of Columbia Tax Court, based upon its findings of fact and conclusions of law, cancelling an assessment of personal property tax against respondent for the fiscal year commencing July 1, 1952 and ending June 30, 1953, and holding that respondent is entitled to a refund of that tax with interest thereon at the rate of 4 per centum per annum from September 23, 1952, until the date of the payment of such refund (App. 14). On September 29, 1952, respondent filed

with the District of Columbia Tax Court a petition seeking the cancellation of personal property taxes assessed against it for the fiscal year commencing July 1, 1952 and ending June 30, 1953 (App. 1). On January 22, 1953, the District of Columbia Tax Court entered its decision in favor of respondent cancelling the assessment of personal property taxes against it and ordering a refund of those taxes to be made by petitioner to respondent (App. 14). On February 6, 1953, petitioner filed a motion with the District of Columbia Tax Court to vacate its decision in favor of respondent and to enter a decision in favor of the petitioner (App. 14). On February 16, 1953, the District of Columbia Tax Court denied petitioner's motion (App. 15). The petition for review by this Court was filed February 20, 1953 (Tr. 16).

This Court has jurisdiction to review the decision of the District of Columbia Tax Court pursuant to Sections 3 and 4 of Title IX of the Act of August 17, 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223 (Sections 47-2403 and 47-2404, D. C. Code, 1951).

STATEMENT OF THE CASE

Respondent alleged in its petition that it is a scientific, non-profit institution incorporated under the laws of the District of Columbia (App. 1). The District of Columbia Tax Court held that respondent was exempt from personal property taxation on July 1, 1952, and that an assessment of personal property taxes against respondent for the tax year beginning July 1, 1952, was erroneous (App. 10, 14).

The District of Columbia Tax Court found as a matter of fact that respondent is a scientific institution not conducted for private gain[1] and that it occupied that status on July 1,

[1] The finding of the District of Columbia Tax Court that respondent is not conducted for private gain presumably is predicated upon respondent's charter of incorporation, constitution and by-laws for, with the exception of a reference to non-paid officers of the Federation (App. 18), no evidence was adduced by respondent that private gain was not entailed in its operation.

1952 (App. 10). The District of Columbia Tax Court, in its opinion, concluded that the activities of respondent in the District of Columbia were of such a nature and so extensive as to entitle the Federation to exemption from personal property taxation (App. 13).

The decision of the District of Columbia Tax Court and its findings of fact were predicated, with minor exceptions, upon evidence adduced by respondent before the court relating to activities of respondent subsequent to July 1, 1952. This evidence was admitted by the court over the objection of the District of Columbia (App. 17, 21, 23, 30-31, 33-34), and, with the exception of evidence relating to respondent's corporate charter, its constitution and by-laws, its income and expenses for the period January 1, 1952, to June 30, 1952 (App. 37, 38, 40, 41), and its Exhibits 5, and 8A through 8N inclusive, the evidence adduced by respondent did not relate to the beginning of the tax year.

The respondent was incorporated in the District of Columbia in 1939 as a corporation having the following objects and purposes:

> "Third. The particular business and objects of said corporation shall be to develop, promote, further and encourage a comprehensive program on the North American continent for the advancement, restoration and conservation of wildlife, and in pursuance with such purpose to organize any or all agencies, societies, clubs, associations or other groups and individuals which are, or should be interested in the restoration and conservation of wildlife, to unite such agencies into one or more permanent unified agencies for the purpose of educating the public to a full recognition of the needs and value of wildlife resources and their restoration and perpetuation, to present to such agencies, societies, clubs or individuals, or to the general public, by such methods as may be from time to time determined upon, such pertinent facts and in-

formation as may contribute to the purposes herein set forth, to cooperate with other organizations in other countries on the North American continent for the purposes herein set forth, and to cooperate with the national and state governmental agencies, or the agencies of any other government in such manner as may be helpful, expedient or necessary in the furtherance of the purposes herein set forth, and to do all other necessary or proper things in the effectuation and accomplishment of the said purposes and objects." (Exh. 2.)

Respondent has a constitution and by-laws which contains a preamble reading:

"Believing that the natural resources of this Continent are economic, social, recreational and aesthetic assets which should be restored and perpetuated for our posterity, and realizing that this can be achieved only through an aroused and enlightened opinion among the people of this nation, we dedicate this Federation to these ends." (Exh. 1.)

Article II of the constitution and by-laws of respondent provides that:

"The purposes of the Federation are, as set forth in the Certificate of Incorporation, and more particularly as follows:

"(a) To organize all agencies, societies, clubs and individuals which are or should be interested in the restoration, conservation and scientific management of wildlife into a permanent, unified agency for the purpose of securing adequate public recognition of the needs and values of wildlife resources.

"(b) To develop a comprehensive program based upon scientific study and technical research for the advancement, restoration, management and conservation of wildlife.

"(c) To present to the public such pertinent facts, scientific and research discoveries and information as may contribute to the solution of the problem involved in the restoration and conservation of wildlife.

"(d) To cooperate with other conservation organizations in the western hemisphere and elsewhere.

"In furtherance of the foregoing objectives, the Federation is empowered to take such steps, engage in such activities and cooperate with the National and State governments and such other agencies, including scientific and technical research societies, as may be helpful or necessary to these aims. It may, for the development and furtherance of its program and activities thereunder accept donations of land, funds, and other aids, and it may hold title to property both real and personal." (Find. of Fact App. 4, 5, Exh. 1)

Article VIII of the constitution and by-laws of respondent provides for a board of directors consisting of seventeen persons. Respondent's president and three vice-presidents are members of the board of directors ex officio. One director is elected from each of thirteen regions of the United States and each region is made up of certain of the several States of the United States. The District of Columbia is contained in region No. 2. This region includes the States of New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia (Exh. 1). The members of respondent Federation are corporations, associations and groups throughout the United States who are engaged or interested in the protection of wildlife, the dissemination of information concerning it, and in the study of it, and related activities (App. 4; Exh. 1). Only State members are entitled to vote at meetings of the members although other groups not affiliated with State members may from time to time be admitted to membership (Exh. 1). Individuals may not, as such, become members of respondent Federation (Tr. 107; Exh 1).

The respondent maintains its headquarters in the District of Columbia (Find. of Fact App. 4). The Respondent has 55 full time employees in the District of Columbia (Find. of Fact App. 5). The work of these employees is devoted to carrying out the general activities of respondent and none of them spends his full time working for the benefit of the District of Columbia (App. 39). The percentage of time devoted by respondent's employees to purely District of Columbia matters is a small part of the total time spent by these employees in performing respondent's functions (App. 43). None of the officers of respondent is a District of Columbia resident or connected in any way with the District of Columbia (App. 45, 46). Respondent's President resides in Atmore, Alabama. Of its three vice-presidents, one resides in New York City, one resides in West Plains, Missouri, and the third resides in Spokane, Washington. Its treasurer is from Great Falls, Montana. Only its secretary is located in the District of Columbia and his connection with the Federation is in no way representative of the District of Columbia. (App. 18, 19, 45, 46.)

Funds to carry on the activities of respondent are raised through the sale of stamps depicting various flora and fauna of wildlife (Find. of Fact, App. 5). Six thousand persons in the District of Columbia purchased stamps "this year" (Find. of Fact App. 5.) Funds are also obtained by respondent through the publication and sale of albums in which wildlife stamps may be kept, as well as from the sale of books on wildlife and other items (App. 18, 30). Respondent not only sells its own publications, but also sells publications of other organizations (App. 29, 30). These books are sold at a profit by respondent (App. 32). Respondent for the sale of wildlife stamps utilizes a mailing list consisting of 521,000 names of which only 831 on the list are located in the District of Columbia (App. 55). For the 6-month period ended June 30, 1952, respondent had a total income of $419,487.69 from its sale of stamps, stamp

albums and literature (App. 37). Of that total income, $287,102. was attributable to sales of stamps (App. 38). For the same 6-month period, respondent's expenses amounted to approximately $400,000. (Find. of Fact App. 8). These expenses consisted of rent, salaries, taxes and the cost of operation of respondent's office in the District of Columbia amounting to $308,672.60, distribution of $18,913.87 to 22 organizations throughout the United States affiliated with respondent, each of which received approximately $900. and expenses of the various divisions operated by respondent amounting to $72,484.93 for a total for all expenses of $400,071.40 (App. 40, 41). No evidence was presented by respondent as to any portion of the expenses of respondent disbursed for purely District of Columbia matters (App. 39, 40, 41). However, none of the affiliates to whom respondent disbursed the sum of $18,913.87 was located within the District of Columbia (App. 40).

Respondent publishes twice a month a publication called "Conservation News" containing educational and scientific material which it mails free of charge to about 5,000 persons and groups, 150 of which are in the District of Columbia (Find. of Fact App. 6). "It also prepares, publishes and mails to the same persons and groups another publication called 'Conservation Report' of educational and scientific content, * * *" (Find. of Fact App. 6). [Although the District of Columbia Tax Court found that "Conservation Report" has educational and scientific content, the testimony was that the report is issued each week while Congress is in session and contains a resume of the bills entered in Congress pertaining to the natural resources of the United States (App. 38, 39)] Respondent also from time to time distributes papers and pamphlets on conservation matters to teachers and students free or at low cost to them (Find. of Fact App. 6).

The Tax Court found that "The petitioner [respondent herein] has conducted displays of scientific material in

schools and the like, * * *." (Find. of Fact App. 10.) The record contains no evidence that respondent has conducted any display of scientific material in schools of the District of Columbia. The only testimony concerning displays related to displays in respondent's headquarters (App. 23) and to a display at an unidentified time at the Washington Hotel and American University (Tr. 129). Respondent, at its national headquarters in the District of Columbia, provides a service for its affiliated organizations in 45 States of the United States. Three of respondent's personnel in the District of Columbia devote the majority of their time to the handling of questions presented by affiliated organizations and sending these affiliates information and materials which have been requested by them (Find. of Fact App. 6). Respondent provides an administrative service supplementing information and cooperating with all other conservation organizations throughout the United States (Find. of Fact App. 7). Respondent maintains a field service and employs for that service a field director who travels throughout the United States and organizes as well as strengthens the present affiliations of organizations with respondent (Find. of Fact App. 6, 7). The field service director also provides conservation assistance to all the States and territories (App. 41). Respondent has an education committee which grants fellowships to universities in the United States for various conservation programs. Four such fellowships were granted during the year 1952. In addition, respondent has a program for awarding scholarships (Find. of Fact App. 8). Respondent has a grant-in-aid program for encouraging affiliates of respondent to present to respondent various local programs connected with the conservation of the nation's natural resources. Respondent bears three-quarters of the cost of such programs based on a formula (Find. of Fact App. 7). Annually, respondent holds a meeting at which problems of conservation throughout the United States and the financial

and business operations of the Federation are considered. (App. 46).

Personnel employed by respondent at its national headquarters in the District of Columbia frequently respond to inquiries made to them concerning wildlife and conservation subjects (Find. of Fact App. 9). However, "In the District of Columbia there are very little fish and wildlife resources that we have to concern ourselves with because of its physical size" (App. 35). Respondent at its headquarters has free displays of posters depicting wildlife, patronized by local persons (Find. of Fact App. 9). Respondent also maintains a book library and film library at its national headquarters which may be used by interested members of the public (Find. of Fact App. 8). However, the book library is used primarily by staff members of respondent for the purpose of making up various reports. No record is kept by respondent Federation as to use of the library by persons other than employees of the Federation (App. 26). The Tax Court also found that the film library was held out as available to the public by "notices" in local newspapers (Find. of Fact App. 8). [No evidence was presented that more than one notice respecting the film library, (the notice of November 20, 1952) had been sent out to newspapers by respondent. Cf. Tr. 148 and App. 28.] Once or twice a week respondent Federation shows at its national headquarters motion pictures on conservation subject matter to employees of the Federation and not to the general public (App. 24, 42). No public announcements are made of the fact that motion pictures are to be shown by respondent. If any member of the public should attend the showing of these pictures, it is merely incidental (App. 47, 56). Respondent makes available lecturers, including its Art Director who, upon request, gives lectures in the District of Columbia (Find. of Fact App. 9). No evidence was available that any talks and lectures were actually given within the District of Colum-

bia by respondent's officers, or its art director (App. 24), and respondent has no fixed procedure for giving lectures at stated times within the District of Columbia; it provides lecturers only if it is requested to do so (App. 42). Since July 1, 1952, respondent Federation gave to the junior and senior high schools of the District of Columbia a full color fish chart (App. 26, 49, 50). Twenty-six schools within the District of Columbia received this fish chart which was 28 by 42 inches in size and had a retail value of $2.00 (App. 57). Since July 1, 1952, the Federation supplied to the National Science Teachers Association certain material which it disseminates without charge in order that the Teachers Association might distribute this material to science teachers throughout the United States (App. 50, 51). It was assumed that science teachers in the District of Columbia who are on the National Science Teachers Association list received this material. No evidence was available, however, as to the number of teachers in the District of Columbia on that list (App. 50, 51). Respondent contributes to the Community Chest, and has also given wildlife stamps and books and pamphlets to local hospitals (Find. of Fact App. 9, 10). This material was damaged and, so far as respondent is concerned, had no further value (App. 56). The total retail value of the donation of damaged material by respondent would be about $200.00 (App. 53). During times of forest fires respondent Federation issues warnings to the public about the dangers of dry forests (App. 51). No warnings have been issued concerning forest fires within the District of Columbia (App. 52). Although there has been a Dutch Elm plague in the District of Columbia, the Federation, from July 1, 1952, to the time of the trial of this case before the District of Columbia Tax Court, has done nothing about it (App. 52).

The Tax Court found that respondent "on the tax day here involved, was a scientific institution and was not con-

ducted for private gain'' (App. 10), and concluded that respondent was entitled to exemption from personal property taxation (App. 14). From this decision the District of Columbia petitioned for a review of this case by this Court. (Tr. 16).

STATUTES INVOLVED

Section 6, Paragraph 10 of the Act of July 1, 1902, 32 Stat. 590, 620, ch. 1352 (Sec. 47-1208, D. C. Code, 1951):

> "The following personal property shall be exempt from taxation.
>
> "First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain."

Section 6 of the Act of February 18, 1929, 45 Stat. 1226, 1227, ch. 259 (Sec. 47-1206, D. C. Code, 1951):

> "That beginning July 1, 1930, returns of all personal property other than automobiles shall be made in the month of July in the fiscal year in which the assessment is levied and the value of such property shall be made as of the first day of that month except that merchants shall continue to return their average stock in trade as provided in said Act of 1902: *Provided,* That this section shall be effective during March, 1929."

STATEMENT OF POINTS

1. Unless an organization seeking exemption from personal property taxation demonstrates that it performs or renders substantial services for the public and relieves the District of Columbia from a burden of government, it is not entitled to exemption. The respondent failed to meet these

basic requirements and is not entitled to exemption from personal property taxation.

2. For purposes of tax exemption, it must be established that an organization seeking such exemption was entitled to that status on July 1st of the fiscal year for which exemption is sought. Evidence tending to prove or establish the status of such an organization subsequent to the commencement of the fiscal year is not determinative of its status at the beginning of the fiscal year, and the admission by the District of Columbia Tax Court of such evidence was erroneous. A decision of the District of Columbia Tax Court predicated upon evidence of the status of respondent and its activities subsequent to July 1, 1952, in a case involving the right of respondent to exemption from taxation for the fiscal year commencing July 1, 1952 and ending June 30, 1953, is erroneous.

SUMMARY OF ARGUMENT

To entitle an organization to exemption from personal property taxation it must appear that its activities within and for the benefit of the District of Columbia are a material part of its total activities, and that it relieves the Government of some burden which would otherwise have to be assumed by the Government. The National Wildlife Federation is organized for the purpose of promoting and developing programs for the advancement, restoration and conservation of wildlife on the North American Continent, and devotes its energies and resources to that purpose. The evidence before the Tax Court did not show that respondent's activities for the benefit of the District of Columbia were substantial, or that the respondent relieves the District of Columbia from a burden of government which it would otherwise have to assume. Respondent is not entitled to receive a Government subsidy through exemption from personal property taxation when, by its certificate of incorporation, its constitution and by-laws, and the evidence adduced by it before the Tax Court, it is

shown that respondent's connection with the District of Columbia results entirely from the fact that it maintains its headquarters here, primarily and extensively rendering its services elsewhere.

The right of respondent to exemption from personal property taxation must be proved to exist as of the commencement of the fiscal year for which respondent sought the exemption. It was respondent's status as it existed on July 1, 1952, which was determinative of the question whether it was entitled to exemption for the fiscal year 1953 which commenced on July 1, 1952, and ended on June 30, 1953. Evidence as to respondent's activities occurring subsequent to July 1, 1952, could not and did not establish for the respondent a tax exempt status as of the beginning of the tax year. The admission of evidence by the Tax Court of respondent's activities subsequent to the commencement of the fiscal year for the purpose of establishing respondent's right to tax exemption was error, and a decision based upon such evidence is invalid.

ARGUMENT

I

Respondent neither relieves the District of Columbia of its burdens of government nor renders to the District of Columbia, or the people of the District of Columbia, a substantial service entitling it to exemption from personal property taxation.

The respondent, a District of Columbia corporation, has as its objective the development, promotion, furtherance and encouragement of a comprehensive program on the North American Continent for the advancement, restoration and conservation of wildlife. It cooperates with other organizations in other countries on the North American Continent, and with national and State governmental agencies, or agencies of other governments, in order that it may promote wildlife on the North American Continent. (Exh. 1, 2.) The preamble of its constitution and by-laws states that it is dedicated to the restoration and perpetua-

tion of the natural resources of the North American Continent (Exh. 1). None of its officers is from the District of Columbia (App. 45, 46). No member of its board of directors represents the District of Columbia, which is included within a region encompassing the States of New York, New Jersey, Pennsylvania, Delaware and Maryland (App. 45, 46; Exh. 1). None of the respondent's fifty-five full time employees devotes his full time for the benefit of the District of Columbia (App. 5, 39). The percentage of time devoted by respondent's employees to District of Columbia matters is a small part of the total time which these employees spend in performing respondent's functions (App. 43). There is no evidence that respondent's expenses or expenditures for the period commencing January 1, 1952, and ending June 30, 1952, included any amount disbursed on behalf of the District of Columbia (App. 39, 40, 41). (Donations to District of Columbia organizations referred to herein were made subsequent to July 1, 1952, which petitioner does not deem material to this case.) Although respondent distributed during that same period $18,913.87 to affiliated organizations throughout the United States, no distribution was made by it to any affiliated or associated organization in the District of Columbia (App. 40), notwithstanding the fact that 6,000 persons in the District of Columbia donated funds to respondent through the purchase of wildlife stamps during the current year (Find. of Fact App. 5). Although respondent sends a publication entitled "Conservation News" free of charge to 5,000 persons and groups whose names are carried on a mailing list, of whom 150 are in the District of Columbia, as well as a publication entitled "Conservation Report", not one of the persons on that list, so far as it pertains to the District of Columbia, appears to be connected with the District of Columbia Government, and this list is composed almost entirely of Federal officials or persons connected with the Federal Government (Exh. 9). The organization of the Federation

is directed to the problems of the United States of America in wildlife conservation (App. 43). The evidence presented by respondent as to respondent's activities in the District of Columbia subsequent to July 1, 1952, demonstrated forcefully the fact that respondent's activities within the District of Columbia result entirely from the maintenance of its national headquarters within this city. From July 1, 1952, to the time of the trial of this case before the District of Columbia Tax Court, a period of five months, respondent was able to show as indicative of its activities within the District of Columbia only: (1) that it donated damaged materials to certain charitable organizations, having a total value at retail, undamaged, of $200. (App. 52, 53, 56); (2) that it gave to each of 26 schools in the District of Columbia a fish chart which had a retail value of $2.00 (App. 57); (3) that it, as do the majority of citizens of the District of Columbia, contributed to the Community Chest (App. 9); (4) that it answers telephone calls at its national headquarters concerning questions on wildlife (App. 9); (5) that it maintains for its employees a library which may be used by the public (App. 8, 26); (6) that it has a film library available to members of the public (App. 9); (7) that its officers, if requested, will give lectures, although no evidence was presented that any lecture has ever been given (App. 9, 24); (8) that it shows motion pictures at its headquarters for the benefit of its employees although, if some member of the public should enter the room where the motion pictures are being shown, and such attendance is incidental, the member of the public may remain (App. 24, 42, 47, 56) and (9) that there are displays in respondent's headquarters of material on wildlife which may be observed by the public (App. 23). Although respondent recognizes the existence of a Dutch Elm disease within the District of Columbia, a matter of concern to respondent, it has done absolutely nothing about it (App. 52). Its action on the matter of the pollution of the Potomac River, were it to take any action, would con-

sist merely of resolving that something ought to be done about such pollution, and to send a copy of such a resolution to the Commissioners of the District of Columbia and the Health Department of the District of Columbia (App. 47). "In the District of Columbia there are very little fish and wildlife resources that we have to concern ourselves with because of its physical size" (App. 35).

This Court has stated that the granting of a governmental subsidy implicit in tax exemption is predicated upon a theory that the organization to which such exemption is granted relieves the Government of its burdens. *Hazen* v. *National Rifle Association of America, Inc.*, 69 App. D. C. 339, 101 F. 2d 432; *District of Columbia* v. *Mt. Vernon Seminary*, 69 App. D. C. 251, 100 F. 2d 116; *Government Services, Inc.* v. *District of Columbia*, 88 U. S. App. D. C. 360, 189 F. 2d 662, cert. denied, 342 U. S. 828; *Washington Chapter of American Institute of Banking* v *District of Columbia*, ... U. S. App. D. C. ....., 203 F. 2d 68. This Court in the *Washington Chapter of American Institute of Banking* case, *supra*, stated unequivocally that:

> "Exemptions from taxation are strictly construed against those claiming the exemption, even if the claimant is a charitable or educational institution, because such exemptions are in the nature of a renunciation of sovereignty, and are at war with sound basic tax philosophy which requires a fair distribution of the burden of taxation. * * *
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> * * * * * * * * * *
>
> "A tax exemption of this character can justly be sustained only upon the ground that the concession is due as a quid pro quo for the performance of a service essentially public, which the state is thereby, at least partially, relieved pro tanto from the necessity of performing. Without that concurring prerequisite, an exemption becomes virtually a gift of public funds, at the expense of the taxpayer."

The District of Columbia Tax Court recognized the applicability of this principle in its decision exempting respondent from personal property taxation (App. 12). Nevertheless, the opinion of the Tax Court does not state that respondent is entitled to tax exemption because it renders any service to the District of Columbia, or relieves the District of Columbia of a burden which it and the people of the District of Columbia would otherwise have to assume. Recognizing this principle and acknowledging its applicability to this case, the District of Columbia Tax Court stated only "that the activities of the petitioner [respondent herein] in the District of Columbia as of the tax day, and during the taxable period here involved are different and more extensive and substantial than those found for the earlier period, so much so and to such an extent as to the Court seems sufficient to support the exemption." And even in this statement the Tax Court ignored the basic premise for establishing tax exemption, that is, that exemptions from taxation are strictly construed and the party claiming such exemption must clearly show its right thereto. *Hebrew Home for the Aged* v. *District of Columbia,* 79 U. S. App. D. C. 64, 142 F. 2d 573. *Combined Congregations of the District of Columbia* v. *Dent,* 78 U. S. App. D. C. 254, 140 F. 2d 9. The Supreme Court in *Norton Co.* v. *Department of Revenue of Illinois,* 340 U. S. 534, 537, 95 L. Ed. 517, 71 S. Ct. 377, said that it is the general rule

> "* * * that a taxpayer claiming immunity from a tax has the burden of establishing his exemption.
> "This burden is never met merely by showing a fair difference of opinion which as an original matter might be decided differently."

The burden was upon the respondent contesting the assessment of a personal property tax against it to show the invalidity of the tax; not upon the District of Columbia to

sustain its validity. *District of Columbia* v. *Morris,* 81 U. S. App. D. C. 356, 159 F. 2d 13. And it was the responsibility of the respondent, claiming a right to exemption from taxation, clearly and positively to establish its right to such exemption by proof of all of the facts essential to bring respondent within the statute authorizing the exemption. *M. F. Ham Evangelistic Assn.* v. *Matthews,* 300 Ky. 402, 189 S. W. 2d 524, 169 A. L. R. 1216; *Camas Stage Co.* v. *Kozer,* 104 Oregon 600, 209 P. 95; *Clement* v. *Stone,* 195 Miss. 774, 15 So. 2d 517, 519, 152 A. L. R. 742.

The District of Columbia Tax Court found that respondent maintains libraries of books and films available to members of the public (App. 9). It did not find, for there was no evidence adduced before the Tax Court on this matter, that the material contained in the libraries maintained by the respondent was not available to members of the public through governmental sources, or that the libraries of the District of Columbia were not equally as complete as those of respondent. The District of Columbia, as a supplement of the public educational system of the District, maintains a free public library for the use of all persons who are permanent or temporary residents of the District of Columbia (Act of June 3, 1896, 29 Stat. 244, ch. 315, as amended by the Act of April 1, 1926, 44 Stat. 229, ch. 98 (Secs. 37-101 and 37-103 D. C. Code, 1951)). For the fiscal year 1952, a total of $1,413,000. was appropriated for the District of Columbia Government for the expenses of maintaining the public library of the District of Columbia, and an additional $343,500. was appropriated for capital construction (Act of August 3, 1951, 65 Stat. 155, 159, ch. 292). No doubt, the library maintained by respondent is useful and complete, but it is designed primarily for use by respondent and not for use by the public, and nowhere does it appear that any reduction has been caused in the expenses incident to the maintenance by the District of Columbia Government of its

public library system as a consequence of respondent's activities in maintaining its own libraries.

The District of Columbia Tax Court found that respondent contributes to the District of Columbia Community Chest. In this matter the position of respondent corresponds with that of many thousands of persons and organizations within the District of Columbia. If contribution to the District of Columbia Community Chest is an element for tax exemption, then the majority of the citizens of the District of Columbia can meet this test. Moreover, the District of Columbia Tax Court was without evidence upon which it could base any finding that the contribution of respondent to the Community Chest was substantial. It was found by the District of Columbia Tax Court that respondent would provide lectures upon requests to groups and organizations of the District of Columbia (App. 9), but, significantly, the Tax Court did not find that any lectures had been given by respondent (App. 9, 24). The Tax Court found also that respondent had displayed scientific material in schools and the like and had distributed free pamphlets to them (App. 10). The evidence, however, as to displays, related only to displays at respondent's headquarters in the District of Columbia and to a display at some unidentified time at American University and the Washington Hotel. (App. 23; Tr. 129, Cf. App. 26). Even here, however, the Tax Court made no finding of fact that the activities of respondent in displaying and donating material and distributing free pamphlets was in any degree substantial when compared with the total activities of respondent in the conduct of the affairs of this national organization. But, even though such displays and donations or distributions were made, the Tax Court did not find and could not find that the District of Columbia was relieved of any of its burdens, and it did not find and could not find that a substantial service was rendered by respondent to the people of the District of Columbia. The Tax Court satisfied itself with

a statement that the activities of respondent on July 1, 1952, and subsequent thereto "are different and more extensive and substantial than those found for the earlier period, * * *" (App. 13). The Tax Court, in reaching its conclusion that respondent was entitled to tax exemption, ignored the evidence adduced by respondent, itself, that the time devoted by respondent's employees to District of Columbia matters is a small part of the total time spent by these employees in performing the totality of respondent's functions (App. 43); and it ignored also the evidence adduced by respondent that it is little concerned with wildlife problems within the District of Columbia (App. 35).

The decision of the District of Columbia Tax Court has resulted in the granting to respondent of a subsidy in the amount of $1,764.62 for personal property taxes which it otherwise would be required to pay the District of Columbia for public services which it receives, such as fire and police protection, maintenance of streets and the like (App. 13). A consideration of the evidence presented by respondent in support of its claim for tax exemption produces but one conclusion, that respondent is a national organization whose function it is to preserve and encourage the propagation and preservation of wildlife throughout the United States. Having its headquarters in the District of Columbia the respondent can not escape certain matters common to all organizations, profit or non-profit, located in a large metropolitan area. Thus, it donates to the Community Chest and answers inquiries directed to it relating to activities in which respondent has an interest. Because respondent is a national organization and not a local one, its activities within the District of Columbia are incidental to its primary objectives which are the devotion of its energies to those areas of the North American Continent where its activities may be promoted. Out of a total of $400,000 in expenditures for the six-months period ended June 30, 1952, (Find. of Fact App. 8) respondent could show an ex-

penditure for the District of Columbia activities of $52. representing the value of fish charts distributed by it. (App. 57). To this respondent added, as indicative of its local activities, evidence that it had donated damaged material to charitable organizations within the District of Columbia. Had the material not been damaged, it would have had a value at retail of $200. (App. 53). When these amounts are compared with the taxes amounting to $1,764.62, of which respondent has been relieved from payment (App. 14), it becomes difficult to determine the services rendered to the District of Columbia which the District of Columbia Tax Court found to be substantial.

The lack of interest of respondent in local matters can no more forcefully be demonstrated than through the evidence presented by respondent, itself, that, recognizing the seriousness of the blight affecting Elm trees in the District of Columbia, it, nevertheless, has ignored the problem completely (App. 52). To this must be added the action which respondent would take in another matter of real concern to the District of Columbia, that is, the pollution of the Potomac River which would consist of resolving that some action ought to be taken by the District of Columbia Commissioners and the Health Department of the District of Columbia to abate such pollution (App. 47).

A conclusion that respondent is entitled to tax exemption avoids completely the basic reasons for the creation of respondent and the activities actually carried on by respondent, and must be predicated upon a determination that since respondent's motives and objectives are excellent, it is for that reason entitled to be subsidized by the District of Columbia through tax exemption, notwithstanding the fact that it is in no way representative of the District of Columbia, renders only minor and insignificant services to the District of Columbia, and is designed and intended to benefit and assist the North American Continent primarily and the District of Columbia only incidentally.

To include the respondent among those organizations entitled to exemption from taxation when the respondent renders no services to the District of Columbia and no assistance to the Government in the performance of its governmental functions, is to derogate the basic reasons for the granting of tax exemption. As the Supreme Court said in *Yazoo and M. V. R. Co.* v. *Adams,* 180 U. S. 1, 22, 45 L. Ed. 395, 407, 21 S. Ct. 240, Rehearing den. 181 U. S. 580, 45 L. Ed. 1011, 21 S. Ct. 729:

> "Public policy in all the states has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational, and municipal purposes; but this list ought not to be extended except for very substantial reasons; * * *."

II

Evidence of respondent's activities subsequent to the commencement of the fiscal year for which respondent sought exemption from personal property taxation was improperly admitted by the District of Columbia Tax Court and a decision based upon such evidence was erroneous.

At the commencement of the hearing before the District of Columbia Tax Court, the court ruled:

> "THE COURT: In the first place, we are concerned with geography and time. The geography is the District of Columbia and the time is the particular year here involved of 1953—that is, the period from July 1, 1952 to June 30, 1953. Now, that is what we are concerned with." (App. 16, 17).

Immediately after the Court's ruling, the following occurred:

"BY MR. IMLAY:

"Q. Mr. Wood, what are the present activities of the office which you have testified is located here in the District of Columbia at 3308 14th Street Northwest? What are the present activities of that office? [2]

"MR. WIXON: Well, I will object to that, Your Honor, on the ground that the taxability is determined as of the tax date and not sometime in the future.

"THE COURT: You mean during the present taxable period?

"MR. IMLAY: That is correct, Your Honor—during the present taxable period. What are and have been the activities of the local office.

* * * * * * * * *

"THE COURT. I think the question is proper. First let us get what it does everywhere and let's then see what it does in the District of Columbia." (App. 17).

Subsequently, during the course of the proceedings before the District of Columbia Tax Court, the District of Columbia objected again to the introduction before the court of evidence of respondent's activities subsequent to July 1, 1952. The proceedings relating to this objection were as follows:

"BY MR. IMLAY:

"Q. Mr. Wood, can you tell us to whom this Conservation News that has been received in evidence —to whom this publication is currently being sent? [2]

"MR. WIXON: Well, I object.

"THE COURT: On what grounds.

"MR. WIXON: As I understand the requirement here, it is whether the National Wildlife Federation is required to submit a return and be taxed upon its personal property for the fiscal year 1953 which commences as of July 1, 1952 and ends June

[2] This case was tried December 2, 1952.

30, 1953. Now, the fact that some situation may have existed in 1951 or 1952 prior to July 1, 1952 or that some situation exists today which may be different than that on the tax dates is, as I see it, immaterial.

"THE COURT: Well, the witness has testified, and I think it is clear, that these conservation newsletters were sent out during the present taxable year beginning July 1, 1952. Now, I think that is important.

"MR. WIXON: Well, excuse me, sir, but my objection was to the question as phrased which, as I recall it, was to whom are these being sent today.

"THE COURT: Well, I understood from the question that when he used the word 'today,' he meant the letters that we have before us which were manifestly sent during the taxable year.

"Now, of course, it is understood Mr. Imlay, that we are talking about this taxable year." (App. 21.)

And again in the course of the proceedings, following prior rulings of the District of Columbia Tax Court that evidence of respondent's activities subsequent to July 1, 1952, was properly admissible, objection was made to this ruling. The proceedings respecting this objection were as follows:

"BY MR. IMLAY:

"Q. Would you please look at that and tell us what it is, Mr. Wood. A. This is a complete collection of the wildlife stamps and albums since the beginning date of 1938 through 1952. The stamps are mounted in the albums. This is offered for sale by the Federation.

"Q. Presently—since July 1? A. That is correct.

"THE COURT: And it is the principal source of revenue.

"MR. IMLAY: That is correct.

"MR. WIXON: If Your Honor please, he says since July 1, 1952—since.

"MR. IMLAY: It is being sold since—

"MR. WIXON: But the point of it—the question here is the taxability of this organization as of July 1, 1952. Something since—it might be offered for sale as of today. That has nothing to do with it. I think we ought to understand that.

"BY MR. IMLAY:

"Q. Was it offered for sale before July 1 and on July 1, 1952? A. Yes, sir.

"THE COURT: I don't think that we are bound by just what happens on that particular day. I think it is the tax year, and a lot of activities of this organization all couldn't have taken place on the first day of July. I don't know what is the purpose of this evidence. That is what concerns me." (App. 33, 34.)

The respondent, with the exception of its charter and constitution and by-laws (Exhibits 1 and 2), Exhibit No. 5 (App. 28) and Exhibits Nos. 8A through 8N, inclusive (App. 33), and the evidence presented by respondent concerning its expenditures and income for the 6-month period ended June 30, 1952 (App. 37, 38, 40, 41), restricted its evidence to matters subsequent to July 1, 1952. At no time during the course of the proceedings did the District of Columbia Tax Court determine or require respondent to produce evidence as to its activities as of the commencement of the fiscal year for which respondent seeks exemption from taxation and, consistently, the District of Columbia Tax Court held that evidence of respondent's activities subsequent to July 1, 1952, was proper. The decision of the Tax Court that "the activities of the petitioner [respondent herein] in the District of Columbia as of the tax day, * * * are different and more extensive and substantial than those found for the earlier period, * * *" (App. 13) is unsupported by the evidence.

It is the contention of petitioner that the evidence admitted by the Tax Court as to the conduct of respondent's

affairs and its activities subsequent to the commencement of the period for which it seeks tax exemption was erroneous. It is the further contention of petitioner that if the decision of the District of Columbia Tax Court in this case is sustained, it establishes and will perpetuate as an erroneous premise of law applicable in cases involving tax exemption, a right in an organization seeking such exemption to obtain that status based solely upon evidence of its activities occurring subsequent to the commencement of the fiscal year for which exemption is sought, irrespective of whether such activities are related back to the commencement of the tax year.

The contention of petitioner was recognized in 1946 by the Board of Tax Appeals for the District of Columbia, predecessor to the District of Columbia Tax Court. The Board, in *Washington Mosque Foundation, Inc.* v. *District of Columbia,* 74 W. L. R. 1189, a case involving exemption of real estate, said:

> "The claim for exempton must be denied. Petitioner was not the owner of the property on the first day of the fiscal year ending June 30, 1947, the year for which the tax appealed from was assessed, and did not acquire it until July 25 of that year. In the absence of indication of legislative intent to the contrary, the status of property as to liability for, or exemption from, taxation remains throughout the tax year as it was at the beginning of each year unaffected by a change in the use of the property during the tax year."

Although the *Washington Mosque Foundation* case, *supra,* related to real property taxes, the tax day for both real and personal property taxes is the first day of July of each fiscal year. Section 6 of the Act of February 18, 1929, 45 Stat. 1227, ch. 259 (Sec. 47-1206, D. C. Code, 1951), provides:

> "That begining July 1, 1930, returns of all personal property other than automobiles shall be made in the month of July in the fiscal year in which the assessment is levied and the value of such property shall be made as of the first day of that month except that merchants shall continue to return their average stock in trade as provided in said Act of 1902; *Provided,* That this section shall be effective during March, 1929."

And this Court held in *Tumulty* v. *District of Columbia,* 69 App. D. C. 390, 102 F. 2d 254, that:

> "Under the taxing statute of the District of Columbia, personal property taxes are assessed against 'every *person, association, corporation, firm or company* [hereinafter referred to as person] *liable to taxation*', as of July 1st of each year. A printed blank schedule is available in the month of July and *every person liable* for personal property taxes is required to prepare and file a schedule of the personal property owned on that date, together with his address. * * *"

See also *Mercury Press, Inc.* v. *District of Columbia,* 84 U. S. App. D. C. 203, 173 F. 2d 636, cert. denied 337 U. S. 931.

The conclusion of the Board of Tax Appeals in the *Washington Mosque Foundation* case, *supra,* is consistent with decisions of state appellate courts concerning the same question. *Mayor and Aldermen of Jersey City* v. *Montville Tp.,* 84 N. J. L. 43, 85 A. 838, affirmed 85 N. J. L. 372, 91 A. 1069; *Jabert Operating Corp.* v. *City of Newark,* 16 N. J. Super. 505, 85 A. 2d 216; *Orthodox Hebrew Board of Education* v. *Tax Commissioner of Ohio,* 155 Ohio St. 380, 98 N. E. 2d 834; *Beekwill Realty Corp.* v. *City of New York,* 254 N. Y. 423, 173 N. E. 570; *Martin County* v. *Drake,* 40

Minn. 137, 41 N. W. 942; *People* v. *Ladies of Loretto,* 246 Ill. 403, 92 N. E. 908; *Mayor of City of Baltimore* v. *Jenkins,* 96 Md. 192, 53 A. 930; *cf. United States* v. *Certain Parcels of Land,* 61 F. Supp. 164; *Magruder* v. *Supplee,* 316 U. S. 394, 86 L. Ed. 1555, 62 S. Ct. 1162.

The necessity that the status of property, whether real or personal, be determined as of the effective tax date for each fiscal year is demonstrated by the requirements imposed upon the Commissioners of the District of Columbia by the Act of June 29, 1922, 42 Stat. 668, ch. 249, Sec. 47-501, D. C. Code, 1951. This statute provides:

> "* * * for the purpose of defraying such expenses of the District of Columbia as Congress may from time to time appropriate for, there hereby is levied for each and every fiscal year succeeding that ending June 30, 1927, a tax at such rate on the aforesaid property [real and personal] subject to taxation in the District (the rate fixed herein on intangible personal property not to be made less but which may be increased by the commissioners in their discretion to any rate not in excess of the rate imposed upon real estate) as will, when added to the other taxes and revenues of the District, produce money enough to enable the District to pay promptly and in full all sums directed by Congress to be paid by the District, and for which appropriation has been duly made; and that the Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine and fix annually such rate of taxation as will, when applied as aforesaid, produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed; and that the Commissioners of the District shall, in accordance with existing law, cause all such taxes and revenues to be promptly collected and, when collected, to be daily deposited in the Treasury to the credit of the District for the purposes herein set out; * * *."

And Congress recognized the requirements of the statute in the report of the House of Representatives in connection with the District of Columbia appropriation bill for the fiscal year 1950 (H. R. Report No. 167, 81st Congress, 1st Session) in which the Committee on Appropriations referred to the statute and said:

> "It is further pointed out by the Committee that under the District Code (47 D. C. 501) the Commissioners of the District are empowered and directed to fix anually such rates of taxation on real and personal property as will produce the money necessary to defray the share of the expense of the District during the year for which the rate is fixed. It is the belief of this Committee that such revenues as are needed to meet the anticipated deficit in this bill can be raised by the Commissioners of the District of Columbia taking action in line with the above-mentioned statute."

The significance of the statutory requirement upon the Commissioners respecting the establishment of real and personal property tax rates for the purpose of defraying the expenses of the District of Columbia is that the Commissioners of the District of Columbia, in proceeding under this statute, should not be required to speculate whether property may be relieved from tax liability based upon events occurring subsequent to July 1 of a fiscal year.

This Court held in *Howard University* v. *District of Columbia*, 81 U. S. App. D. C. 40, 155 F. 2d 10, "that it is the *present* use and not the intended use in the future which is controlling," in tax exemption matters. If, therefore, an organization seeking tax exemption may sustain its right to such exemption on the basis of its actions subsequent to the commencement of the fiscal year for which it seeks exemption, then its status is determined not on the basis of its *present* use of property, but on its use of the property in the future.

But, aside from the fact that the decision of the District of Columbia Tax Court ignores the rule stated by this Court in the *Howard University* case, *supra,* the decision of the District of Columbia Tax Court is violative of the evidentiary premise that a decision based on speculation is erroneus. In the absence of testimony by respondent as to its activities on the tax day, the District of Columbia Tax Court had no other alternative but to speculate or presume that because respondent adduced evidence concerning its activities at a later time, these activities coincided with those of respondent on the tax day. The Supreme Court of the United States has said "Speculation cannot supply the place of proof." *Moore* v. *Chesapeake & Ohio Ry. Co.,* 340 U. S. 573, 578, 95 L. Ed. 547, 71 S. Ct. 428; cf. *Galloway* v. *United States,* 319 U. S. 372, 87 L. Ed. 1458, 63 S. Ct. 1077, rehearing denied 320 U. S. 214, 87 L. Ed. 1851, 63 S. Ct. 1443.

This Court, in *Parlton* v. *United States,* 64 App. D. C. 169, 75 F. 2d 772, stated: "It has been frequently said that proof of the existence of a given condition raises no presumption of its previous existence." See also *Liverpool and London and Globe Insurance Company* v. *Nebraska Storage Warehouses,* 96 F. 2d 30, 36, which referred to *Parlton* v. *United States, supra.* Following its decision in *Parlton* v. *United States, supra,* this Court in *Spund* v. *Myers,* 67 App. D. C. 135, 90 F. 2d 380, considered the admission of evidence that lights on the automobile of the appellant, who had struck and killed one Virginia Pflieger, were not burning immediately after the collision. This Court concluded that such evidence was competent to be considered together with other testimony in the case as proof tending to show that the lights were not burning at the time of the collision. In reaching this conclusion this Court said: "This conclusion does not contradict our decision in *Parlton* v. *United States,* 64 App. D. C. 169, 75 F. (2d) 772, inasmuch as in that case *the subsequent condition appeared*

about ten days after the alleged condition which was sought to be proven by it." (Emphasis supplied.)

Thus, this Court has specifically recognized the rule that proof of an existing condition does not give rise to a presumption that the same condition existed at a prior time unless the existing condition is so close in time to the prior condition which is sought to be proved that the two conditions may be assumed to coincide.

Applying the decisions of this Court to the rule regarding presumptions, it is impossible to conclude that the evidence presented by respondent of its activities between July 1, 1952, and December 2, 1952, indicated its condition immediately prior to and on July 1, 1952. Certainly, evidence of specific donations, specific displays, and the like, made or conducted by respondent at some time after July 1, 1952, does not give rise to a presumption that these things occurred in like manner at some prior date. An hypothesis that respondent's activities subsequent to July 1, 1952, indicated its activities on July 1, 1952, is equally consistent with an hypothesis that its later activities were different from those on July 1, 1952. If the first hypothesis is justified, the second is equally justified in the absence of testimony from respondent relating to its activities at the beginning of the tax year. In the face of these inconsistent hypotheses, the District of Columbia Tax Court was required to resolve the issue of the right of respondent to tax exemption against respondent, and in favor of the District of Columbia. See *Gunning* v. *Cooley,* 281 U. S. 90, 74 L. Ed. 720, 50 S. Ct. 231; *Stevens* v. *The White City,* 285 U. S. 195, 203, 204, 76 L. Ed. 699, 52 S. Ct. 347; *Koppers Company* v. *Securities and Exchange Commission,* 78 U. S. App. D. C. 151, 138 F. 2d 577.

If any presumption is material in this case, it is a presumption which ought to be applied against respondent.

The activities engaged in by respondent were especially known to the witnesses appearing before the Tax Court on behalf of respondent yet, with minor exceptions, they failed to establish these activities as of the commencement of the tax year for which exemption from taxation was sought. Undoubtedly, the Tax Court presumed that evidence of respondent's affairs subsequent to July 1, 1952, was indicative of its affairs on July 1, 1952, for it referred to the tax date in rendering its opinion, and it found "that the activities of the petitioner [respondent herein] in the District of Columbia as of the tax day, and during the taxable period here involved are different and more extensive and substantial than those found for the earlier period * * *." (App. 13). The Tax Court permitted a presumption to fulfill the requirement in tax exemption cases that one seeking such exemption must establish his right thereto by clear and positive evidence. But the Tax Court did not apply against respondent the presumption that where an employee of a party is in possession of facts bearing upon a matter at issue, and that party does not call the employee, it is presumed that the employee, had he been called to testify, would have testified adversely to the party by whom he is employed. *Washington Gas Light Company* v. *Biancaniello*, 87 U. S. App. D. C. 164, 183 F. 2d 982. The witness for respondent, Mr. Lloyd F. Wood, Secretary of National Wildlife Federation, from time to time referred to other members of the Federation's staff, and stated that these persons possessed specific information on matters of fact involved in the case for respondent. Mentioned by Mr. Wood was Mr. Roger Torrey Peterson, the Art Director of the Federation (Tr. 47, 48) who Mr. Wood identified as having given lectures in the District of Columbia (Tr. 49, 87). Mr. Wood identified Mr. Carl Shoemaker, Conservation Director of National Wildlife Federation, as the individual best in-

formed on respondent's work pertaining to pollution of the Potomac River (Tr. 55, 56, 76, 77). It was stated by Mr. Wood that Mr. Shoemaker was responsible for respondent's activities on matters of conservation and pollution, and that he was closely associated with Potomac River fish problems (Tr. 109-110). In fact, Mr. Wood suggested that Mr. Shoemaker would be the best witness available to testify concerning certain of the conservation and pollution activities of respondent (Tr. 79), and his suggestion was favorably received by the Tax Court, which made the following remark:

> "THE COURT: * * ** Mr. Shoemaker can testify on what he does. We will have him here." (Tr. 79)

In his testimony, Mr. Wood referred to other employees of respondent who possessed information pertaining to respondent's activities. Mentioned by Mr. Wood were Mr. Callison, Assistant to Mr. Carl Shoemaker, and Mr. Aud, respondent's auditor (Tr. 55, 56, 80). Yet, notwithstanding that Messrs. Peterson, Shoemaker, Callison and Aud, all employees of respondent, possessed pertinent information and knowledge relating to respondent's activities, none of these individuals was called by respondent to testify in its behalf. Under these circumstances, the presumption is that had these employees of respondent Federation been called as witnesses for the respondent, their testimony would have been adverse to it. No such presumption was applied by the Tax Court against the respondent, although the Tax Court applied a presumption in its favor and against the petitioner to establish respondent's status as of July 1, 1952. It is to be noted also that although the Tax Court in its decision apparently thought it material and found as a fact that "Six thousand persons in the District of Columbia purchased stamps this year" (App. 5), no presumption was

applied against respondent by the Tax Court for its failure to produce, as it agreed to do, evidence concerning the actual amount of revenue received by respondent from contributors in the District of Columbia who purchased respondent's stamps (Tr. 87, 88). Such a presumption would have resulted in a conclusion that the amount of revenue so received was inconsiderable. If the number of purchasers of stamps was material, then the amount of revenue attained by the respondent from these purchasers was at least equally material.

The evidence before the District of Columbia Tax Court was insufficient to permit of a conclusion by the Tax Court that respondent had clearly shown its right to tax exemption on the tax day. The effect of the decision of the Tax Court was to resolve the doubts as to the right of respondent to tax exemption against the District of Columbia, contrary to the controlling rule in such cases. *Hebrew Home for the Aged* v. *District of Columbia, supra; Combined Congregations of the District of Columbia* v. *Dent, supra; Norton Co.* v. *Department of Revenue of Illinois, supra.*

CONCLUSION

National Wildlife Federation is not entitled to subsidization by the District of Columbia through exemption from personal property taxes, for it has failed clearly to establish either that it renders substantial services to the District of Columbia or that it relieves the District of Columbia Government from any of its responsibilities.

The District of Columbia Tax Court was without evidence sufficient to conclude that at the beginning of the tax year on July 1, 1952, the activities of the respondent brought it within that class of organizations entitled to exemption from personal property taxation. For these reasons the decision of the District of Columbia Tax Court

should be reversed and the case remanded to that Court with directions to affirm the assessment of personal property taxes against the respondent.

Respectfully submitted,

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,754

DISTRICT OF COLUMBIA, *Petitioner*

v.

NATIONAL WILDLIFE FEDERATION, *Respondent*

On Petition for Review of a Decision of the District of Columbia Tax Court

---

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STATEMENT OF QUESTIONS PRESENTED

The Respondent is concededly a "scientific institution incorporated under the laws * * * of the District of Columbia and not conducted for private gain" within the meaning of 47 D. C. Code (1940 ed.) 1208. In the light of that fact,

1. Whether the D. C. Tax Court's finding that Federation also renders substantial services locally to warrant tax exemption for its personal property used and located here as a "quid pro quo" is "clearly erroneous".

2. Whether an additional qualification not found in the exemption statute can be read into it to restrict its application to institutions whose activities performed locally exceed quantitatively all those performed elsewhere, despite the benefits the institution renders to the local community.

3. Whether all the evidence to prove the implied "quid pro quo" qualifications must be limited to what happened on the day of July 1—tax day—or whether the tax period for which the tax is being levied controls the admissibility of such evidence as to time limitations.

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IN THE

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,754

DISTRICT OF COLUMBIA, *Petitioner*

v.

NATIONAL WILDLIFE FEDERATION, *Respondent*

On Petition for Review of a Decision of the District of Columbia Tax Court

---

BRIEF FOR RESPONDENT

JURISDICTIONAL STATEMENT

Respondent adopts petitioner's jurisdictional statement.

STATEMENT OF THE CASE

Respondent is a non-profit corporation incorporated under the laws of the District of Columbia. (Ex. 1 (Article I), Ex. 2, 3). Its objectives are set forth in its Constitution and By-laws (Ex. 1). It was stipulated at the trial that respondent was by notice of assessment dated September 1, 1952, assessed District of Columbia personal property taxes on its personal property for the fiscal year

July 1, 1952 to June 30, 1953, in the total amount of $1764.62, which amount Respondent paid under protest on September 23, 1952.

Long previous to the instant action, in 1941, Respondent had applied for, but was denied personal property tax exemption by the Board of Tax Appeals, on the basis that it did not then render a sufficient *quid pro quo* to the District of Columbia to merit such exemption although it fell within the expressed provision for exempted corporations as a "scientific institution incorporated under the laws of * * * the District of Columbia and not conducted for private gain". *National Wildlife Federation* v. *District of Columbia,* Docket No. 354 (1941), Opinion No. 280.

After paying the assessed taxes on September 23, 1952, Respondent again petitioned for exemption of its personal property located and used within the District of Columbia under 47 D. C. Code (1940 ed.) 1208, on two bases. The first (and the one sustained by the Court below) was that since its previous application eleven years before, Respondent not only came under the express conditions for exemption set forth at 47 D. C. Code (1940 ed.) 1208, (i.e. as a "scientific institution incorporated under the laws * * * of the District of Columbia and not conducted for private gain"), but that it came within the condition read into this language by the Board of Tax Appeals that an important part of its activities now redounds to the benefit of the taxpayers of the District of Columbia. Aside from this primary factual contention Respondent also contended as a matter of law that no condition could be interpolated into the literal language of the exemption provision which would add an additional condition by administrative fiat that the organization must, to be exempted, also devote substantial services to the local populace, as opposed to its efforts for people as a whole. Although this latter question was resolved against respondent, as a matter of law, its resolution was *obiter dictum* due to the factual finding by the same tax judge (Judge Jo V. Morgan) who had considered

the application eleven years before, that Respondent now renders, during the tax period for which refund was sought, a substantial and sufficient "quid pro quo" to the District of Columbia.

The evidence adduced is entirely that of Respondent—the District of Columbia presenting no evidence of any kind in rebuttal. Due to the one-sided selection and argumentative interpretation that the District's brief gives to the evidence adduced, and due to the fact that the District of Columbia failed to have printed the testimony indicated by Respondent,[1] we deem it necessary to resummarize the evidence as follows:

Respondent's only office and only physical plant at the time of the hearing was located at 3308 14th Street, N.W., in the District of Columbia where it is incorporated. (Joint App. 16).[2] There is no office outside of the District of Columbia and many of its functioning officers, who carry on its day to day activities here, live here, including its secretary and business manager (Joint App. 16); its conservation director (who is also the secretary of its local organization, the D. C. Wildlife Federation, which uses the same properties); its assistant business manager; its assistant conservation director; its auditor (Supp. App. 3), and its art director (Joint App. 24).[3] Some officers are also located in other places. (Joint App. 18). The Respondent

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[1] Respondent has now determined that the statement "that the District of Columbia failed to have printed the testimony indicated by Respondent" is erroneous. In accordance with an order of this court dated November 20, 1953, permitting Respondent to correct its brief and file a supplemental appendix, the citation "Supp. App." refers to the Respondent's supplemental appendix.

[2] Its only office now is located at 232 Carroll Street, N.W., Washington 12, D.C., to which it has recently moved to accommodate its expanding local activities. See p. 9, *infra*.

[3] The District's brief (Pet. 6) erroneously states that "none of the officers of respondent is a District of Columbia resident or connected in any way with the District of Columbia". This we submit is completely in error. The local officers enumerated together with the staff carry on the ordinary day to day activities of the Federation between the infrequent meetings of the Board of Directors. The Assistant Corporation Counsel is well aware that the witnesses in this trial are officers of respondent who work and live here.

has 55 full-time employees here who were employed, work, and live here (Supp. App. 1, 3-4, 6).

Although the Federation's expenditures are not broken down so as to show how much of its total budget is spent in the District of Columbia every year (Joint App. 40, 41), during the six-month period ending June 30, 1952, $308,672.60 was disbursed for business expenses in the operation of the office in the District of Columbia, in paying employees, taxes, and other expenses, including its local printing (some printing is done outside of the District. (Joint App. 41)). Thus the bulk of its total income of $419,487.69 is spent on its purely local purchase of services and equipment to run its office, its film and science libraries, its research files, and the rest of its activities here. (Joint App. 37).

The National Wildlife Federation is not a membership organization but works through 45 affiliates which are widely scattered. This affiliation is voluntary and the Federation has no control over the affiliates. (Joint App. 42). The District of Columbia has a Wildlife affiliate here, (Supp. App. 6), and a District of Columbia director, Mr. Carl Shoemaker, who is Conservation director and official spokesman for the National Wildlife Federation on conservation matters, is also secretary of the District of Columbia Wildlife Federation, and representative for the District of Columbia area for that group. (Joint App. 45-46; Supp. App. 3, 4). He is also editor of the Federation paper, the "Conservation News", put out here. (e.g., Ex. 4-G, p. 1). This officer has a duel function, a National and a local one. The local D. C. organization is located in the same offices and uses the same personal property as the parent National Wildlife Federation. (Supp. App. 8). At times its meetings are held in the Federation office and at other times in such places as the Cosmos Club (Supp. App. 8) which is necessitated by lack of sufficient room in the Federation office. (Supp. App. 6).[4]

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[4] See p. 9, *infra*.

The Federation has several component parts, a Servicing Division, a field Service, an Administrative Service, an Educational Service, and a Business office. (Joint App. 18-19, 22, 40-41). The Field Service, which is centered in the District, maintains contact with affiliates elsewhere. (Joint App. 18). The Administrative Service, through non-paid officers, helps to supplement the information and co-operates and correlates its efforts with other conservation organizations (Joint App. 18). Locally in the District of Columbia the Federation cooperates with such organizations as the Wilderness Society, the Audubon Society, and the American Forestry Society. (Supp. App. 2). For example it met with such organizations as the Izaak Walton League and the Audubon Society on August 6, 1952. (Ex. 4-G, p. 4). The Federation has worked with these organizations on such problems as the local pollution of the Potomac River. (Supp. App. 2).

The business office, under the local leadership of the witness, Mr. Lloyd F. Wood, functions to raise funds principally through publishing wildlife conservation stamps, and it also sells at a small profit albums for these stamps, books on wildlife and related items (Joint App. 16-18). Over 6000 persons and organizations in the District of Columbia showed their interest in conservation and natural science by buying the stamps at one dollar per sheet. (Supp. App. 2). The proceeds of the sales go to carrying on the field services, an educational program, the servicing division activities, the film library, and other activities. (Joint App. 19). Aside from a great volume of free natural science literature that is given away (e.g., Ex. 8-A through 8-AA), books on wildlife and related subjects are also sold, and a small margin of profit is used to maintain the Federation's activities. (Joint App. 31-32; see also, e.g., Exs. 7-A through 7-AA). This literature is on the general subject of natural science, conservation, and science education.

The education committee is headed by an education director, Dr. E. Lawrence Palmer, former professor of

nature at Cornell. (Supp. App. 6). This committee supports educational programs of affiliates, it grants fellowships (4 this year), and has a program of scholarships. (Joint App. 19).

The Federation has also a Conservation Division (Joint App. 40), under Mr. Carl Shoemaker, an officer located here who is also secretary of the purely local phase of the Federation's activities here, the District of Columbia Wildlife Federation (Supp. App. 3, 8). This man is one of the most outstanding authorities on conservation (Supp. App. 7), and he is the official spokesman for the Federation on conservation matters. (Supp. App. 3-4). One function of his division is to try and abate the pollution of the Potomac and Anacostia Rivers in Washington, D. C. This activity has been carried out through local conferences, releases to newspapers, and local hearings with health boards and other organizations. The Federation attempts to get the public educated as to what preventative measures must be taken to abate this. (Supp. App. 2, 7). See also the publicity given this subject by the Federation. (Ex. 8-J; Ex. 8-T; Ex. 8a, pp. 10-11).

The Servicing Division[5] prints up and distributes free and at low cost various items of interest in the field of conservation which are of interest to teachers and students. A substantial part of this service is "a District function" (Joint App. 22). It also sends material to local affiliated clubs. A large amount of conservation literature covering natural science subjects is distributed free of charge to interested persons in the District of Columbia and elsewhere who request it. If bulk lots of 100 or more are requested a nominal charge is made (Joint App. 32, 36). Some of such free literature was admitted in evidence on the trial (Ex. 8-A—8-N, Tr. 50; Ex. 8-O—8-AA). Typical are books on Trees (Ex. 8-I, 8-O); books on Natural

[5] This Servicing Division is under the charge of the witness herein, John Ashley Brownridge. Like all the other day to day activities it is localized here in the District of Columbia and Mr. Brownridge is located here.

Resources (Ex. 8-H, 8-N); Pollution (Ex. 8-J, 8-T); Song Birds (Ex. 8-K, 8-P); The Wild Rose (Ex. 8-L, 8-S); Botany (Ex. 8-M); Mammals (Ex. 8-Q); Soil (Ex. 8-R); and Fish (Ex. 8-S).

The Federation publishes a publication locally, edited by its local conservation officer, the "Conservation News" containing eductional and scientific material which is sent free to various organizations and individuals (Joint App. 17, 22). This is sent to persons who ask to be put on the list, including about 145 persons and organizations who receive it free every week in the District of Columbia. (Joint App. 55; see also, Ex. 10). The list of persons receiving this locally includes a great number of biologists, persons connected with the Division of Water Pollution Control, Fish and Wildlife Service, Soil Conservation, the Director of Forests. Aside from such public officers it is sent to such organizations here as the American Nature Association, Wild Flower Preservation Society, National Parks Association, etc. It is also sent to newspaper writers here. Some of the current "Conservation News" were introduced in evidence (Ex. 4F, 4G, 4H 4I and 4J). Also a Conservation Report is sent out weekly while Congress is in session to about 100 persons and organizations who have asked for it in the District of Columbia, giving a resume of bills entered in Congress pertaining to natural resources. (Joint App. 17; Supp. App. 4-5). Other publications are distributed either free or at low cost to teachers and students pertaining to conservation matters. (Joint App. 17).

While the Servicing Division is not exclusively a District of Columbia function, a substantial part of it is. (Joint App. 29). The Servicing Division answers about 15 to 20 local D. C. telephone requests every day for wildlife and conservation information. (Joint App. 54). Some inquiries come from persons who find small animals and birds which have been hurt, and they want to know how to feed them. Others make inquiries about how to attract birds to their yards, and what type of feed they like. Some

inquiries are by persons who have questions concerning water pollution, particularly with reference to the Anacostia and Potomac Rivers. Calls come in from persons who have elm trees that are diseased, and want to know what to do. Others want to get rid of troublesome starlings. Calls come in from pupils who have been given a nature project, and they want to know various characteristics of animals or certain birds, or other things they are working on. Boy Scouts come up to the office in search of information to obtain merit badges for bird study. (Joint App. 54; Supp. App. 11).

The Federation had a piece published recently in Bill Gold's column in the Washington Post. At that time the Federation received over 100 telephone calls, and 75 per cent of them were within the District of Columbia. It had been announced by him that free pamphlets were available, for anyone who was interested, on birds, trees, fish, and other subjects. If the caller asked for a specific pamphlet the Federation sent it to him. If he asked for a selection, a complete file of free material (Ex. 8) was sent him. (Supp. App. 12). It also publicly advertises to lend free its extensive collection of nature films to schools, garden clubs, Boy Scouts, Girl Scouts, sportsmen's clubs and other organized groups. (Supp. App. 12).

The Federation sends out nature releases usually 2 or 3 times a month. This goes to all of the District of Columbia newspapers. (Joint App. 27). One such release was issued, for example, on November 20, 1952 to all District of Columbia newspapers free of charge by mail. (Ex. 5). The Federation also issues nature release bulletins three times a month which are used by weekly newspapers. (Joint App. 27; Supp. 4). This service is provided free to these weekly newspapers in the District of Columbia, (Joint App. 27; Supp. App. 4), and is only issued to weekly newspapers. A list of District of Columbia weekly papers to which the nature release bulletin is mailed was introduced into evidence. (Ex. No. 11). Some of the releases to newspapers

set forth the Federation's stand on the local river pollution problem. (Supp. App. 2, 3). The Federation reaches everyone here through its publicity.

Also in the office of the Federation there is a film library and a book library which are available to all citizens of the District of Columbia who want to use them. (Joint App. 9). The Servicing Division encompasses the film library which is a large file of motion picture films relating to nature and wildlife, pollution, and other subjects of that nature, and it is available on loan to any organization in the District of Columbia free of charge. (Joint App. 9). Some of the film strips now completed are on forest fires, soil conservation and others. The Federation recently advertised in the newspapers that its film library is available to all schools and organizations of the District of Columbia in subjects varying from " * * * water pollution abatement, soil conservation, and wildlife management, to fishing and nature study." (Joint App. 8, 9).

Once or twice a week motion pictures on conservation subjects are shown in the office and the public is invited to come in at any time and view these. (Joint App. 24). These are now mostly shown to employes of the Federation, but the members of the general public are present on occasions. Outsiders can come in and a few were present on the last showing in the office. (Joint App. 42, 55-56). The Federation has no special room for movies and must show them in its office. It keeps all the equipment for showing them there in its office. (Joint App. 25). Its move to the new location at 232 Carroll Street, N.W., Washington 12, D. C., has been completed and there are more facilities for displaying materials and acquainting the public in general with the activities. While the Federation does not publicly advertise these showings, anyone is welcome free of charge. (Joint App. 55).

The Federation maintains in its office a research library that is second to none in the conservation field which has been accumulated over the years that the Federation has

been functioning, and at the present day represents one of the most outstanding research files available. (Joint App. 25). This library is available to any person or organization in the District of Columbia that wants to use it. (Joint App. 26). Individuals come in and visit the office to get data on whatever subject they are interested in. No record is kept of the number of the general public using this library. The library is used by staff members to make up various reports and newsletters. (Joint App. 26).

The Federation maintains displays in its office for those who want to come in and see them. There is a display of the wild life art work which goes to make up the conservation stamps. The people in the District of Columbia can come in and see these and other such exhibits on file. Each year's wildlife stamps are framed and hung in the office for public exhibition where they can be observed by individuals and students. (Joint App. 23). These displays are open to the public at all times, and are only used for local exhibit. The frames of these displays are 6 feet by 6 feet. (Supp. App. 5). There is also an exhibit in the office showing what the Federation is, how it gets its money, how its distributes its funds, and its general make up. (Supp. App. 6). There are displays also of all the material the Federation distributes. There are displays of the Conservation Newsletter and other publications and leaflets on conservation of our natural resources. The public can come in and obtain this material free if they want small quantities. Other material which is offered for sale can be obtained on an over-the-counter basis, and this material is also on display. This material is available to everyone and every organization in the District of Columbia and the facilities of the office are open to everyone. (Joint App. 49).

Most of the people who come into the office are local people. They give their names and addresses to a young lady in charge of the office services, who is on hand to help them. Their names and addresses are taken so that the Federation can send out solicitations and additional information at a later period. (Supp. App. 5).

The Federation maintains displays elsewhere in the District of Columbia. The National Science Teachers' Association had a meeting at the Washington Hotel, and the Federation had a display there. The Federation had another display at the American University here. Various organizations call for displays, and for the materials to put the displays on exhibit and for public edification. The Federation tries to educate the public of the District of Columbia and elsewhere to be acquainted with matters pertaining to wildlife. (Supp. App. 9). Every March the Federation sponsors National Wildlife Week. Usually a particular subject of Wildlife species which is threatened is brought to the attention of all the people including the citizens of the District of Columbia. (Joint App. 44; Ex. 4-G, p. 7; Ex. 4-J, p. 7). Material has also been made available to the Smithsonian Institute here.

The District of Columbia schools call on the Federation for help. Recently a teacher in the local Brightwood School, for instance, asked for materials to be supplied. (Joint App. 26). A complete packet of material (Ex. 8) the Federation has for free distribution—including the pamphlets that are distributed on nature and wildlife—was sent to each science teacher in the District of Columbia who is in the National Science Teachers' Association, a group organized in the District of Columbia. (Joint App. 50). Also free materials are distributed to schools of the District of Columbia on request, and where they request a number of copies for classes, those are supplied. (Joint App. 49). Recently the Federation gave to each of the junior and senior high schools in the District of Columbia one of the Federation's fish charts which shows the various common fresh and salt water fish. These were addressed to the principals of the D. C. Schools to give to their science classes. (Joint App. 49, 50). These charts are in full color, and depict the 30 common fresh water fish of North America. They are used in the science or biology departments in the schools. Each is about 28x42 inches,

and is worth about $2.00 each. Twenty-six local schools got them. (Joint App. 57). The Federation has a quantity of pamphlets and leaflets of an educational nature which are used in the schools. These are mostly on birds, wildlife, pollution and animals.

The Federation's officers are always available to give talks and lectures to various local groups on the subject of conservation and other subjects. (Joint App. 24). The organization tries to get the public educated to what is needed so that they will bring pressure to bear to get such problems as pollution abated. (Joint App. 47). Roger Tory Peterson, a noted lecturer, author, and the art director of the Federation, gives lectures here as part of his duties on request of local organizations. (Joint App. 24).

Mr. Carl Shoemaker, the conservation director of the Federation, the Editor of "Conservation News", and the secretary of the D. C. organization (Joint App. 42; Supp. App. 4) was appointed to the President's Advisory Board on Pollution, and the Federation has issued a number of releases and stories on pollution throughout the country. (Supp. App. 10). One of the pamphlets introduced in evidence is on this subject. (Ex. 8-U). The Federation receives inquiries from local residents about the pollution of the Potomac and Anacostia Rivers. (Joint App. 23). The Federation has been working with such groups in D. C. as the Wilderness Society, the American Forestry Association, and the Audubon Society with reference to such problems as pollution of the Potomac River, which at the present time is polluted to a dangerous degree. (Supp. App. 2). Mr. Shoemaker meets with other groups to discuss the abating of this situation. (Supp. App. 3). Matters of conservation and pollution are left up to Mr. Shoemaker who is one of the most outstanding authorities on conservation. (Supp. App. 7).

Other interests of the Federation are as follows: The Federation has taken an interest in conservation in the surrounding areas of Maryland and Virginia where residents

of the District of Columbia go to do their nature activities, and in whose wildlife conservation and natural science they are keenly interested. (Joint App. 45). The Federation has taken an interest in the preservation of trees, protecting them from disease,[6] and from forest fires. Along educational lines this is stressed in pamphlets and books of the Federation. During times of fire danger the Federation publishes fire warnings to the public about the danger of dried-up forests. The Federation distributes its surplus wildlife stamps to such local charitable organizations as Blue Plains, Children's Hospital, and Gallinger Hospital. Also it distributes its books that are slightly damaged. The Federation is now in the process of offering such wildlife stamps to charitable organizations or children's homes that want them. (Joint App. 51-53)

STATUTES INVOLVED

Respondent adopts those portions of the statutes set out in Petitioner's Brief at p. 11.

SUMMARY OF ARGUMENT

1. The evidence to support the District of Columbia Tax Court's findings (i.e., that the Federation both comes within the express terms of 47 D. C. Code 1208, and also the implied condition interpolated therein that it render a substantial *quid pro quo* to the District of Columbia), not only overcomes the "clearly erroneous" rule applied to such findings (*Connecticut Avenue Cafe* v. *District of Columbia,* 169 F. 2d 304), but conclusively proves such fact. The Federation serves as a mecca for natural science, and scientific conservation. Its only office and employees who perform its day to day activities are here, and it offers its services to *all people in the District of Columbia.* Through the medium of the local schools and universities, the local newspapers, people visiting its film and natural science

[6] Inquiries about tree disease come in from local residents.

libraries and files, through lending its film strips, and distributing its literature, it reaches large groups here who manifest through their visits, their contributions, and their telephone inquiries, a great interest in its activities. Through its educational and scientific activities it comes closer to displacing activities performed by state bodies elsewhere than any of the sectarian bodies, exclusive finishing schools, bank training establishments, and other institutions previously considered by this Court.

2. The condition that petitioner attempts to engraft on 47 D. C. Code 1208 to the effect that an institution not only must come within the literal terms of that section, and perform substantial services locally, but must also allocate the major portion of its total activities (figured on some obscure quantitative basis) locally, is unwarranted by its literal language, by case history, or by the obvious intendment of Congress. Under the guise of applying the canon of strict construction (applied to resolve statutory ambiguities) petitioner urges this Court to indulge in judicially legislating conditions into plain language never intended. The language of 47 D. C. Code 1208 has never been so construed since its origin in 1913.

3. The contention that the D. C. Tax Court erred in not limiting all evidence as to the activities of the Federation (in ascertaining the only contested issue of whether the Federation rendered a substantial *quid pro quo* to the D. C. during the tax year), to the single day of July 1, 1952, is patently frivolous. The tax period for which refund is sought runs from July 1, 1952 to June 30, 1953. While the tax day fiction is used as a handy arbitrary guide to determine the situs and fixed value of taxable articles, it would be highly illogical to rest the whole character of the Federation on what it did on a single summer day. No criterion of relevancy exists which puts such narrow illogical conditions on the proof of a fact in modern law.

ARGUMENT

I

The Tax Court's findings that Respondent both falls under the express language of 47 D. C. Code (1940 ed.) 1208, and renders a substantial quid pro quo to the District to merit exemption, is supported by substantial evidence

The petitioner has not at any stage of this proceeding contested the allegation that Respondent is a "scientific institution incorporated under the laws * * * of the District of Columbia, and not conducted for private gain" within the meaning of 47 D. C. Code (1940 ed.) 1208.[7] Its sole contention was that the Respondent failed to render a sufficient *quid pro quo* to the District to merit such exemption.

This issue was tried before the District of Columbia Tax Court and was resolved, as a matter of fact contrary to petitioner's present contention. Its present attempt to reargue the issues going to the weight of the evidence is therefore misplaced. It has been well settled by this Court that findings of fact of the District of Columbia Tax Court will not be disturbed on appeal unless clearly erroneous. *Connecticut Avenue Cafe* v. *District of Columbia,* 169 F. 2d 304 (1948); *Real Estate Mortgage and Guaranty Corp.* v. *District of Columbia,* 141 F. 2d 361 (1944). This does not mean that petitioner is entitled to a trial of the facts *de novo.*

The evidence, furthermore, overwhelmingly refutes petitioner's *ipse dixit,* (based on no facts adduced by the District of Columbia), to the effect that the Federation has

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[7] In fact the District of Columbia made an administrative finding on August 18, 1951 (Certificate No. 802-07297-06) that Respondent came under the provision for exemption from the D. C. sale and use tax (47 D.C. Code 2601(18), and 2605(c)) as a "semi-public institution" organized exclusively for scientific purposes, "no part of the net earnings of which inures to the benefit of any private shareholder or individual".

Although this finding was not introduced in evidence, this Court can take judicial notice of an administrative finding. *Bowles* v. *United States,* 319 U.S. 33.

This finding constitutes an admission by the District of Columbia of the very facts it is now contesting.

no vital role to play in the District of Columbia and natural science, conservation of wildlife and natural resources are subjects wasted on its people. While it is difficult to allocate by any system of quantitative units the value of the services that the Federation renders the District, it is clear that it performs extremely valuable services here. Its only office is here. The officers who carry on its day to day activities are here. Its large staff of 55 employees are all hired, live and work here. It spends large sums of its money here locally to maintain its only office, employees, and various services such as a complete natural science book library, a film library (of natural science subjects), one of the finest files on wildlife and conservation, and public displays in its office, in local schools and universities and in other local institutions. Over 6000 persons and organizations in the District register their interest and support of wildlife conservation every year by buying the wildlife stamps fostering the cause of wildlife conservation to support this unselfish and benevolent organization. Its Servicing Division managed by a local officer distributes free a great deal of literature on natural science subjects to local persons, to local schools, and other organizations. 145 persons and organizations receive free every week its "Conservation News". 100 local persons and organizations receive its Conservation Report free every week when Congress is in session and passing legislation of interest to conservationists. The Servicing Division answers 15 to 20 local telephone inquires a day about Nat-Science. Boy Scouts and science students come into its office for science information. The Federation distributes news releases to local papers, and nature release bulletins to local weeklies, thereby reaching the local thousands. It actually advertises in D. C. papers to give away its literature and to lend its nature films. Its film library, files and book library are open to all D. C. residents for their use. The general public comes into its office, observes natural science films, obtains a great selection of free literature

and nature books at nominal cost, observes the wildlife picture exhibits which are on display there, and receives answers to the myriad questions asked either from its personnel or from its natural science files. The services the Federation offers the public in its office are only limited by the physical space available, a condition remedied to some extent. Its research library is second to none and is available to all students in this field and others who come in, as many do. It performs substantial services for the District of Columbia schools (including public schools) and colleges, lending them conservation displays, giving them charts for science and biology classes, and natural science literature. It has taken part in trying to eradicate pollution in the Potomac and Anacostia Rivers, one of the most serious problems this area has. Its officers are available for talks and lectures to local groups on conservation and other subjects of natural science. Although D. C. residents cannot *kill* animals (killing animals is not a Federation interest but quite the reverse), it is a well-known fact that D. C. residents spend much of their time in surrounding forest and field, in Rock Creek Park, along the Potomac, in the large bird sanctuaries lying between Washington and Alexandria, and conservation and natural history are of lively interest to them. There is not a weekend that Washington residents do not flock to the woodlands and nearby mountain and sea areas. This stimulates a deep interest in natural science, and they turn to the Federation to answer questions they bring back. Not only Boy Scouts and school students, but adults all over the city share this interest.

The Federation, moreover, extends it facilities to *all* persons in the District without selection. It is not confined to an elite social and financial clique (Cf. *District of Columbia* v. *Mt. Vernon Seminary,* 100 F. 2d 116) nor is it dedicated to the work of a particular religious sect, (Cf. *District of Columbia* v. *Catholic Education Press,* 199 F. 2d 176, certiorari denied 73 S. Ct. 276; see also: *Catholic Home for*

Aged Ladies v. *D.C.*, 161 F. 2d 901; *Baptist Church Extension Ass'n* v. *District of Columbia*, 158 F. 2d 327; *District of Columbia* v. *Vestry of St. James Parish*, 153 F. 2d 621); nor does it concern itself with a subject-matter of trivial importance, Cf. *C.I.R.* v. *Orton*, 173 F. 2d 483 (C.A. 6), nor does it exist for purposes of influencing legislation. Cf. *International Reform Federation* v. *District Unemployment Comp. Bd.*, 131 F. 2d 337; certiorari denied 317 U.S. 693. Clearly it is not an extension of private commercial interests memberships in which "* * * depends upon the fact of voluntary association with a particular organization primarily private in character * * *", *Washington Chapter of American Institute of Banking* v. *District of Columbia*, 203 F. 2d 68, nor a commercial establishment which sells its services for profit. *Government Services Inc.* v. *District of Columbia*, 189 F. 2d 662. We are unable to find, in fact, any organization which makes any greater attempt to reach all the local inhabitants with its services, or one which relieves local government to any greater extent of a burden often assumed by universities and conservation commissions within the framework of state government—of bringing home to the citizenry the needs of conservation (including the preservation of birds, plants, trees, aquatic life, and animals) and of educating the local population in natural science. The "governmental function" test is exemplified by the fact that the Federation works very closely with local governmental bodies, and its conservation director was appointed to the President's Pollution Control Board. It works very closely also with other official bodies interested in wild-life conservation (Cf Ex. 4-G, p. 10; Ex. 4-H, p. 6-7). By any fair criterion, the Federation renders extremely valuable services locally.

The argument of D. C. really is not that the Federation does not offer its beneficial services to the entire city, but that it also seeks to extend its useful work nationally through nation-wide affiliates. It does not follow from this postulate that the Federation does not render a substantial

"quid pro quo" to the District to warrant exemption of its personal property here. Although it is hard to single out the pro rata amount of Federation's total effort expended here, it is apparent with its entire physical plant being located here and functioning as a local mecca for students of science, that it is substantial. Unlike many tax problems the value of gratuitous scientific services cannot be measured by a dollar-value yardstick, or by the computation of time spent on particular projects. This is because the diffusion of scientific learning (like education and religion) is unmeasurable in market place systems of computation. The value of Federation's services to the community considered qualitatively is apparent however and is probably best evidenced by the number of visitors to its office, the number of local telephone inquiries about nature problems, and its widespread diffusion of information in local newspapers, and its unselfish offer to the entire community of it libraries of books, and films. Also in arriving at the qualitative impact the Federation has on the Community, the influence of the Federation on the local schools and universities, and the activities of its local officers in lecturing and in a myriad of other similar activities would have to be taken into account. Also the fact that anyone in town can walk or write into its office (without discrimination) and besides its others services receive up to 100 copies each of a great group of literature on conservation and natural science topics *free* (Cf. e.g., Exs. 8-A through 8-AA), is a substantial service. Certainly the fact that 6000 local citizens contribute to its fine work refutes the contention that Federation's functions in this area fail to interest or supply a need to our community. It is inconceivable that 6000 persons here would support an "out of town" enterprise which concerned itself with subject-matter alien to their interests.

The District attempted to discredit some of the evidence by showing that many conservation problems (e.g. the preservation of certain wildlife species, the conservation of

forest lands, etc. arose outside of the District of Columbia. From this premise it attempted to postulate that no benefit could therefore inure to local citizens (despite their interest in our country's natural wealth) and that education in such subjects as scientific conservation, biology, and botany were wasted, unless the particular subject-matter happens to be found in the District of Columbia. This syllogism is patently erroneous. Our people do not live in a microcosm nor are their interests in the pursuit of natural science circumscribed by the city limits. Aside from the fact that we are a city of approximately 25% parkland, our people are very closely situated to grant natural areas to which they go in their leisure time. Furthermore the character of our city brings people here (who pay local taxes) from all corners of the country. Many of our taxpayers work in the conservation field in the Federal Government. (See for example the names on the list to whom the Federation sends free literature on application). As this Court said in *District of Columbia* v. *Mt. Vernon Seminary,* 100 F. 2d 116, 120:

> "It is highly appropriate that the laws of the District of Columbia should recognize, as they do, the fundamental importance of such a policy [of encouraging by tax exemption the attendance of students from all over the country in a private school rather than just locally]. It is the nation's capital, seat of the national Government, temporary abode of thousands of government employees, mecca of loyal citizens throughout the United States".

While the term "*quid pro quo*" is borrowed from the law of contracts, its use in this context would have to be measured in terms of beneficial services to the community—which the D. C. Tax Court has found to be real and appreciable in this case.

The D. C. in its statement of facts makes much of the fact that in presenting the evidence the Federation did not isolate and identify the number of hours that the Federation devoted "to purely District of Columbia matters"

(Pet. 6), and that it did not break down the "portion of the expenses of respondent disbursed for purely District of Columbia matters". (Pet. 7). Federation obviously does not observe a functional differentiation of this sort, and does not distribute its functions to persons on the basis of where they come from. To borrow a colloquial phrase, "it takes on all comers", and opens its local office to all. In doing this, this city, which is the diffusion center of its activities receives a substantial share of its benefits, and deserves the personal property tax exemption.

II

In any event there is no condition express or implied in 47 D. C. Code 1208, which confines its provisions to organizations the bulk of whose total activities are confined to District of Columbia

The language of the exemption provision (47 D. C. Code 1208) exempts:

> "First. The personal property of *all* library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain."

The word "all" in the above language is a badge of inclusiveness rather than a signal of exclusion. It tells the reader that every one of the favored category should be exempted, if it is shown that such corporation meets the three explicit requirements.

Also Congress included those corporations incorporated under "the laws of the United States" as well as those incorporated locally. This again indicates an intent not to require that the favored status only attach to purely local enterprises whose interests do not extend beyond the local borders.

Finally the language employed in the personal property tax exemption statute has been lifted out of the context of

federal revenue laws where it has appeared, in approximately the same form since 1913. *International Reform Federation* v. *Dist. Unemployment Comp. Bd.*, 131 F. 2d 337, 341 (C.A.D.C.), certiorari denied 317 U.S. 693; *Willingham* v. *Home Oil Mill*, 181 F. 2d 9, 10 (C.A. 5). See also: *Better Business Bureau* v. *U. S.*, 326 U.S. 279, 284; *Trinidad* v. *Sagrada Order De Precicadores*, 263 U.S. 458. It derives a liberal meaning from that context and has a settled interpretation which should not be varied by unwarranted interdelineations capriciously inserted by administrators.

This language furthermore contains no ambiguity which would invoke canons of construction which cannot be employed as an excuse for administrative or judicial legislation. *Brotherhood of Locomotive Firemen and Enginemen* v. *I. C. C.*, 147 F. 2d 312, 79 App. D.C. 318, certiorari denied 325 U.S. 860; *Hilton* v. *Sullivan*, 334 U.S. 323. One of the most frequent devices for avoiding statutory language is to resurrect the well-worn canon of strict construction employed to resolve tax exemption ambiguities and use it to defeat unequivocal legislative intent. This has been expressly forbidden by this Court in *District of Columbia* v. *Mt. Vernon Seminary*, 100 F. 2d 116, which said in addressing itself to the exact point now raised by the District (*Id.* p. 119-120):

> "* * * There is no qualification expressed or implied, in the statute favoring institutions which cater to all classes of persons or solely to residents of the District of Columbia. While tax exemption statutes should be strictly construed, that principle does not justify the interpolation of such qualifications into a statute, clear in its meaning, for the purpose of defeating the privilege granted."

The principle which forbids reading into statutory language additional provisos and exceptions by fiat has been more recently recognized by this Court. In *District of Columbia* v. *Catholic Education Press, Inc.*, 199 F. 2d 176

(C.A.D.C.), certiorari denied 73 S. Ct. 276, that organization claimed exemption of its personal property. Its corporate purposes were stated to be "the preparation, publication, and distribution of educational, literary, scientific and religious matter". It was in short a publishing house displacing no governmental function (such as natural science education and scientific conservation, for instance), and its activities were widely diffused as the mails themselves. Nevertheless this Court said (*Id.* p. 177):

> "If the Catholic Education Press is a scientific institution, if it is incorporated under the laws of the District of Colombia, and if it is not conducted for private gain, it meets the three requirements for exemption from personal property taxation which are enumerated in the statute."

This certainly speaks of no qualifications hidden from the reader and never intended by Congress. In *International Reform Federation* v. *Dist. Unemployment Comp. Bd., supra,* (131 F. 2d 337), the issue was raised as to whether the fact the organization was attempting to influence legislation deprived it of its exempt standing. This Court there said (*Id.* p. 341):

> "Had Congress intended such a limitation as is here contended for, it is fair to assume that it would have said so in precise terms. All that is requisite under the act is that the institution shall be organized and operated exclusively for one of the named purposes. If this appears, the act is inapplicable.
>
> "The conclusion we reach is strengthened by the fact that the words 'corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes' were thoroughly familiar to Congress, having been used in nearly all, if not all, of the revenue acts since 1913."

Two very recent decisions of our sister states reaffirm the principle that express language of tax exemption statutes cannot be overcome by reading into them restricting

qualifications obviously not provided for by the legislature. One of these is a Maryland decision from where our common law is derived. *Morning Cheer Inc.* v. *Board of County Commissioners of Cecil County,* 71 A. 2d 255, 256-258 (Md. 1950); *Appeals of Infants' Welfare League, Inc.* and *Wayne County Board of Assessment and Revision of Taxes,* 169 Pa. *Super.* 81, 82 A. 2d 296 (Pa. 1951). The latter case said in addressing itself to a situation analogous to the instant case, (*Id.* p. 299):

> "When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction. The statute must be given its plain and obvious meaning."

Petitioner cites *Washington Chapter of the American Institute of Banking* v. *D.C.,* No. 11,509, March 1953 in support of its thesis that an organization to be exempt must allocate the greatest aliquot part of its total activity to "purely" District of Columbia activity to merit exemption. The case makes no such holding. The gist of the holding was that in determining whether an organization which was essentially an extension of private commercial banking interests came within the category of an educational institution *within the context of 47 D.C. Code 801a,* the fact that it called itself an educational institution was not enough. The basis of exemption was held to be a concession due "as a quid pro quo for the performance of a service essentially public, which the state is thereby, at least partially, relieved pro tanto from the necessity of performing." (Slip Op. p. 6). The Washington Chapter did not so qualify because "its sole purpose is, and since incorporation has been, the training of bank employees so as to render them more efficient and hence more valuable to the member banks of Association". (Slip Op. p. 8).

Assuming for the moment that the rule in the Washington Chapter case could be mechanically applied to the en-

tirely different facts of the instant. There is nowhere in that opinion one scintilla of support for the proposition that an organization must, to have its personal property (located and used 100% in Washington, D.C.) exempt from personal property taxes, perform a greater aliquot part of its activities here than elsewhere regardless of the beneficial services it performs here. All that case stands for is the reasonable proposition that a privately operated organization which is an adjunct of commercial interests and run for their benefit, cannot by a process of semantical legerdemain, transfer itself into what Congress obviously meant when it spoke of "Buildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student." The "quid pro quo" test is applied to interpret the uncertain application of the statute to the applicant—it is not the "open sesame" to adding any additional and unwarranted conditions in the statute that the administrators see fit.

The *Washington Chapter* case was concerned with the Act of December 24, 1942, the antecedent of which was always interpreted to require that the particular realty must, to be exempt, be used for the same beneficient purposes as its owning corporation was organized to perform. *Gibbons* v. *District of Columbia,* 116 U. S. 404. The real property tax is a charge against the property itself while the personal property tax is a charge against the owner of the property. *Tumulty* v. *D.C.,* 102 F. 2d 254. The personal property provision was culled from similar language in Federal tax statutes, and is framed in much broader terms, as noted above. Therefore even if the *Washington Chapter* case were apposite on the facts, and could be interpreted to support petitioner's propositions, it would not be applicable as a guide to the instant case because of the statutory differences.

Finally the *Washington Chapter* case stands out for the exact opposite proposition to that which petitioner cites it for. It says (Slip Op. p. 5-6:

> "Examining the statute here involved * * * we are unable to conclude that the Act * * * contemplates a scheme of tax exemption * * * as narrow in purpose, and as devoted to the improvement of a purely private group * * *."

Petitioner's contention is that the Federation services *too many people* and too broad a segment of the public with its scientific services. While the *Washington Chapter* case denies that that organization is an educational institution within the penumbra of the real estate exemption, in this case petitioner admits that respondent comes within the literal terms of the personal property exemption, but nevertheless seeks to defeat respondent's privilege by asking this Court to engraft a new proviso on the language as promulgated by Congress to exclude institutions whose services are extended to too many people.

III

Petitioner's contention that all evidence to prove that respondent rendered a substantial quid pro quo to the District, and also came under the provisions of 47 D. C. Code 1208, should have been restricted to what happened in the single day of July 1, 1952 is frivolous and has no support in authority or common sense

Petitioner advances the surprising theory that in proving its right to exemption as a scientific institution incorporated under the laws of the District of Columbia and not conducted for private gain, respondent was restricted in presenting evidence to what happened on one day—July 1, 1952. This day is, of course, denominated tax day, and is fixed as an arbitrary date for purposes of standardizing valuation of personal property, and fixing the situs and ownership of such property in a uniform way.

Initially we should point out that the trial court severely restricted respondent time and time again to the period from July 1, 1952 to December 2, 1952, the day of the trial. (Joint App. 16-17, 21). We think this was unfair because many of the Federation's local activities come in the winter and spring, and as to those we could get in no evidence. We believe that the administrative process calls for more elasticity in the admission of evidence, and the proof of the character of an institution during the annual tax period should not be restricted to facts occurring after the commencement of that period, because often evidence of activities occurring before would have probative value in showing the continuing character of an institution.[8]

The proposition, however, that only the events which transpired on one single day are relevant, establishes an impossible criterion of relevancy which is unknown to the judicial process, much less to an administrative body. It should be pointed out that the tax, regardless of the assessment date, is levied on a yearly basis which only begins on July 1, 1952, and runs to June 30, 1953. The character of the institution during the entire tax period is the controlling factor. It could hardly be denied that an institution which was charitable on tax day and became commercial a week later, would have short shrift in the District of Columbia Tax Court when it contested its September assessment on the basis of its activities on the single day of July 1, 1952. The character of an institution, its constitution, and its entire modus vivendi is not fixed by what it does on a single day or even a single week. Institutions have a continuity of character which does not fluctuate like money value, and is consistent over extended periods. Un-

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[8] The Tax Court failed to restrict counsel for D. C. and his questions sought information entirely outside of the tax period for which refund is sought. (Joint App. 40). He was allowed to ask questions as to periods going back as far as 10 years. In fact the attitude of both court and petitioner's counsel was decidedly hostile to allowing respondent fairly to put in his case, and the transcript is replete with instances of unwarranted interruptions and restrictions on evidence.

der petitioner's contention they are chameleon-like, and proof of what they may be on July 2, 1952 would not establish what their basic attributes were on July 1. This is patently fallacious. Judge Jo V. Morgan said of this contention (Joint App. 34):

> "* * * I don't think that we are bound by just what happens on that particular day. I think it is the tax year, and a lot of activities of this organization all couldn't have taken place on the first day of July. * * *".

The contention of the District becomes even more absurd in the light of the fact that the only real issue on the trial was whether the Federation rendered a sufficient "quid pro quo" to the District to merit personal property tax exemption. (The District never denied that the Federation comes within the literal terms of 47 D. C. Code 1208). Obviously to prove this it could not be limited to the day of July 1, 1942 because it must prove its character over a much more extended period to prove its "value" to the community. If the "quid pro quo" theory of exemption is read into 47 D. C. Code 1208, it is the aggregate of all of the activities of an institution over a period of time for which the tax subsidy is granted.

Let us assume, *arguendo,* however, the proposition that the "value" of the Federation to the community must be proved as of one day—July 1, 1952. That proof need not consist of things that happened on that one day. Even the monetary value of property as of a certain date can be established through the proof of facts not too remote in time. For example, in proving the value of D.C. property of a certain time, sales of that property subsequent to that time are probative evidence of such fact, just so they are not too remote in time. *Hazelton* v. *LeDue,* 10 App. D. C. 379; *First Natl. Bank* v. *Fox,* 40 App. D. C. 430, certiorari denied 231 U.S. 751; *Ruppert* v. *McArdle,* 42 App. D. C. 392. See also: p. 360, *Hamel, Practice and Evidence before*

the U. S. Board of Tax Appeals, (1938). A tax court may consider even facts existing during years subsequent to the basic date, if the relevance of such facts is shown. *379 Madison Ave. Inc.* v. *Com'r,* 60 F. 2d 68 (C.A. 2); *H. H. Miller Industries Co.* v. *Com'r,* 61 F. 2d 412 (C.A. 6). If money value of property of a certain date may be proved by facts subsequent to that date, surely the much less concrete value that an institution must render the community (in addition to the conditions set forth in the statute), to constitute the "quid pro quo" can be similarly proved.

CONCLUSION

We submit that the finding of fact of the D. C. Tax Court that the Federation not only comes within 47 D. C. Code 1208, but also renders a valuable and substantial quid pro quo to merit exemption is well substantiated by the evidence and manifestly is not "clearly erroneous". We submit that the proposition that an institution must devote the bulk of its total activities (computed in some quantitative scale) to the District of Columbia is an unwarranted interpolation into a clear statute. We submit that the contention that the Federation should have been limited to what happened on one day is frivolous.

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SUPPLEMENTAL APPENDIX FOR RESPONDENT

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,754

6

DISTRICT OF COLUMBIA, *Petitioner*,

v.

NATIONAL WILDLIFE FEDERATION, *Respondent*.

On Petition for Review of a Decision of the District of Columbia Tax Court

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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SUPPLEMENTAL APPENDIX FOR RESPONDENT

EXCERPTS FROM TESTIMONY AND PROCEEDINGS

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22 **Lloyd F. Wood**

Direct Examination

* * * * * * * * * *

35 By Mr. Imlay:

* * * * * * * * * *

Q. Now, in your local office that you testified is here in Washington, do you have employees locally employed here? A. Yes, the organization at the present time has

around 55 employees who live within the District of Columbia.

* * * * * * * * * *

37 Q. And here in the District of Columbia, for instance, what are your activities as regards these stamps? A. Well, in the District of Columbia we have some 6,000 individuals who contribute to our program. And annually these wildlife stamps are sent to these people and we hope that they will contribute to the organization.

* * * * * * * * * *

The Court: How much do these stamps cost?

The Witness: We ask one dollar, generally, for
38 the sheet of wildlife stamps.

* * * * * * * * * *

74 The Witness: Well, we work with other groups
75 in the District of Columbia.

The Court: What other groups?

The Witness: The Wilderness Society, the American Forestry Association, and the Audubon Society, with reference to local matters on pollution, as an example.

The Court: In what way? What pollution in the District of Columbia?

The Witness: The Potomac River, sir. The Potomac River at the present time is polluted to the degree that it is dangerous for people to—

* * * * * * * * * *

The Witness: Well, we try to work with these other groups in abating the pollution situation.

The Court: You don't do it yourself, do you?

The Witness: No, we try to get together in a meeting, like this, and talk about it and then try to bring our
76 pressure to bear on people who have things to do—

* * * * * * * * * *

The Witness: We talk about it and we issue—at times—well, we send releases to the newspapers setting forth our

stand on it. And we appear at hearings and things like that in order to—

Mr. Wixon: May we have some identification who "we" is or are?

The Witness: The organization—members of the organization.

The Court: Well, who—you?

The Witness: Mr. Carl Shoemaker, our conservation director.

* * * * * * * * * *

77 Q. State how you use Mr. Carl Shoemaker in that work.

* * * * * * * * * *

Q. Proceed. A. Mr. Shoemaker, as conservation director of the Federation, meets with these other groups and discusses the pollution situation as it pertains to the District of Columbia.

* * * * * * * * * *

79 The Court: Well, he does know to this extent—that Mr. Shoemaker is used in the matters of discussion of pollution, and I think as far as that is concerned, to that extent the testimony will remain. All other testimony will be stricken.

By Mr. Imlay:

Q. You have testified that there are 55 members of the staff, I believe. A. That is correct.

Q. What are their functions generally? What have their functions been since July? A. Their functions gen-
80 erally are clerical.

Q. And local officers, what have been their functions? A. The officers oversee the operations of the Federation. As I indicated before, I am a business manager and I oversee all the business functions of the Federation. Mr. Shoemaker is the conservation director and his position

is more or less official spokesman for the Federation on conservation matters. Mr. Callison is his assistant. Mr. Brownbridge is my assistant, and consequently has some of the same activities I have. And Mr. Aud is our auditor. The staff members that are located outside of Washington—if that is pertinent—

Q. Yes. A. Dr. E. Lawrence Palmer, formerly of Cornell University, who is our director of education.

Q. Now, going back to your local organization, state whether or not any of the officers operate on a local basis as opposed to a national basis. A. Well, Mr. Shoemaker, another function of Mr. Shoemaker is secretary of the District of Columbia Wildlife Federation.

* * * * * * * * * *

Cross Examination

By Mr. Wixson:

89 Q. How many copies of that particular publication are sent out to persons within the District of Columbia? I don't speak of the Metropolitan area. I speak of the District of Columbia. A. I don't know.

Q. Would you be able to give any estimate? A. Well, in proportion to the rate of the newsletter, I would
90 say probably around 100.

* * * * * * * * * *

Q. Do you have any other publications which are issued from time to time and circulated throughout the country? A. We have a series of what we call nature releases, which are given free to weekly newspapers as a service.

* * * * * * * * * *

The Court: What weekly newspaper in the District of Columbia?

The Witness: Any weekly newspaper. For example, when we began the program we asked all of the weekly newspapers if they wanted this free service. We have responses, I believe, from around two thousand.

* * * * * * * * * *

102 Q. Now, you on direct examination made a statement respecting some activities of a local nature. I believe you testified that there is a display in the District of Columbia of posters. A. That's correct.

* * * * * * * * * *

Q. Don't you maintain that display of material because you have your national headquarters here in Washington, because you have people who may be interested throughout the country in coming to Washington? A. From actual observation, most of the individuals who come into our office are local people.

103 Q. Do you ask each one where he is from? A. No. They generally give that information.

Q. To whom do they give that information? A. Usually to the young lady in charge of our services.

Q. Does she ask them where they are from? A. Generally we try to get their name and address so we can send out our solicitations and additional information at a later period.

* * * * * * * * * *

105 Q. Have you distributed, or have you set-up within the District of Columbia any displays, any exhibits, in which the general public is admitted? A. Yes. We have displayed material in our office at all times as well as displays themselves which people can come in and observe.

Q. What do those displays consist of? A. One of them is the art work of the current issue of the Wildlife stamps.

* * * * * * * * * *

Q. How big are these figures? A. The pictures themselves are around 6 x 9. The entire thing is around 6 feet by 6 feet.

Q. Are those pictures made available to any other organizations outside the District of Columbia? A. No,

106 they are very valuable, and, consequently, they are only for local exhibition.

* * * * * * * * * *

Q. Now, what other exhibits do you have? A. We have an exhibit that tells what the Federation is. How it gets its money. How it distributes its funds, and the general make-up of the Federation.

Q. Is that done for local people only? A. We have an exhibit which is for local purposes and we also have several traveling exhibits which are sent around to the other organizations.

Q. Now, do you maintain offices outside of the District of Columbia? A. No.

Q. Do you maintain any staff outside the District of Columbia? A. Yes. Dr. E. Lawrence Palmer, our education director, he is a former professor of nature at Cornell University, his residence serves as his office. He has a girl on his staff that we pay as well as he.

* * * * * * * * * *

114 Q. How many affiliated organizations are there? I am not speaking now of the forestry or the other. How many state or regional wildlife organizations are affiliates of the National Federation? A. We have 45 affiliates.

* * * * * * * * * *

115 Q. None of those are in the District of Columbia? A. One is.

Q. One is? A. Yes. The District of Columbia Wildlife Federation.

* * * * * * * * * *

120 Q. How about the employment of officers and clerks and things of that kind? A. Employment of officers is taken care of by the Board of Directors. As far as the clerks go, we hire them in our office here in the headquarters.

* * * * * * * * * *

Q. Let's say you have a problem that you put up to your Board of Directors and they act on it. A. The latest problem is space requirements. The present space that we are in is not adequate for the expansion that we have had over the past few years, and we are searching for a new place to live.

* * * * * * * * * *

123 Q. The point I am making is that your organization does not do anything except make recommendations. A. I see what you mean. We try to get the
124 public educated to what is needed so that they will bring pressure to bear upon people who govern them to get these things abated.

Q. All right. Between meetings the Board of Directors really do not take a very active part in the operations. They leave it entirely up to you and your office; isn't that right? A. On the matters of business, they leave it to me. On the matters of conservation, pollution, and so on, they leave that to Mr. Shoemaker. He is one of the most outstanding authorities on conservation.

* * * * * * * * * *

126 Redirect Examination

By Mr. Imlay:

Q. First of all, going back to the showing of the movie pictures, do you have a theatre in which to show them? A. They are generally shown in the office.

Q. How large is your office. A. We have an office that totals around seven thousand square feet.

Q. Do you have a room where groups can come in; is that it? A. No, we don't have a room as such any more. We used to have one, but we have expanded so much that we had to utilize that space.

Q. State whether or not any group as such does come to your office? A. In the past they have, but we have discouraged them because we havn't had the space recently.

When we get into our new quarters, we hope to achieve that.

Q. Have moves been made to get any new quarters? A. Yes. We contemplate space up near Takoma Park.

Q. What has been done in that respect? A. The Board of Directors assigned the Executive Committee to handle that, and the Executive Committee is being polled at the present time on the particular space selected by the treasurer and myself and the other members of the staff.

127 Q. You have talked about the District of Columbia Wildlife Federation affiliate, where are they located? A. In our office. Mr. Shoemaker is the Secretary of that.

Q. Mr. Shoemaker is a local officer of that? A. Yes; that's right.

Q. Is he also a national officer of this organization? A. He is a staff member and the conservation director.

Q. Do they have meetings there in your office? A. I believe they do.

* * * * * * * * * *

Q. Where else are they held? A. They are held in the offices of these other organizations, and also at the—most of these members belong to the Cosmos Club. They meet down there and discuss it there.

* * * * * * * * * *

128 Q. You say Mr. Shoemaker is the conservation director? He is the conservation director of what?

The Court: Of the parent organization.

The Witness: He directs the conservation activities as opposed to business activities, which I have charge of.

By Mr. Imlay:

Q. He has a dual function? A. That's right.

* * * * * * * * * *

129 Q. Now, going back to the question that was asked you about displays and exhibits. You mentioned some that are down in your office. Are there others? A.

I can't remember any within this last period we speak of, but from time to time we have—

Mr. Wixon: I object.

The Witness: (Continuing)—had displays in other organizations. May I give an example?

The Court: Just a minute. If you can give an example.

The Witness: The National Science Teachers Association had a meeting at the Washington Hotel. We had a display there. We also have one at the American University. And various organizations from time to time
130 call on us for that activity—if we could supply displays and if we could supply the materials for them to put on exhibit, and for public edification. Our function is education. We try to educate the public to be acquainted with matters pertaining to wildlife and the District of Columbia, as well as other people, benefit by it.

* * * * * * * * * *

133 Q. You have testified that the organization has a film library and a book library; is that correct? A. That's correct.

Q. To whom are they available? A. To the citizens of the District of Columbia, and to organizations that want to use it.

* * * * * * * * * *

134 **John Ashley Brownridge**

* * * * * * * * * *

Direct Examination

By Mr. Imlay:

Q. Will you state your full name? A. John Ashley Brownridge.

* * * * * * * * * *

Mr. Imlay: Before we proceed with this witness, I would like to offer the Corporate Charter and the amendment to the Corporate Charter which we have procured.

* * * * * * * * * *

136 Q. And that business address is what? A. Washington, D. C. 3308—14th Street.

* * * * * * * * * *

Q. What is your ordinary job? What is your regular job? What does your regular job consist of? A. My job is that of assistant business manager which encompasses the servicing division. That is one of my primary occupations, being in full charge of the servicing division, also the stamp mailing program and the writing and preparation of promotional material.

* * * * * * * * * *

Q. Will you describe more fully your activities in connection with the servicing division? A. The serv-
137 icing division encompasses the film library which maintains a complete—not a complete but a large file of motion pictures, motion picture films relating to nature and wildlife, and pollution, and various subjects of that nature, which we have available for loan to any organization free of charge.

It also has a quantity of pamphlets and leaflets of an educational nature which are used in many of the schools, which are again on birds, wildlife, pollution, and animals.

We distribute these pamphlets free of charge to anyone who requests them in quantity lots to any organization that wants them.

* * * * * * * * * *

By Mr. Imlay:

140 Q. You have spoken of pollution. Do you have any personal knowledge of any work done in that field since July 1st? A. Only the fact that Mr. Shoemaker has been appointed to the President's Advisory Board on Pollution and that we have issued a number of releases and stories on pollution throughout the country.

Q. Do you have one of these on pollution? A. Yes,
141 we do.

Q. That is part of an exhibit. Maybe you can identify that. A. Petitioner's Exhibit No. 8-V.

* * * * * * * * * *

146 The Witness: We are continuously getting requests of that kind.

We also get calls from pupils who have been given a nature project, and they want to know various characteristics of various animals or certain birds or other things that they are working on.

The Court: What about the Boy Scouts?

The Witness: The Boy Scouts have been up to our offices on a number of occasions.

One worked on his merit badge two weeks ago and he wanted some information—he was working for his bird merit badge, I believe it was. He was up there looking for books that he could read up on birds.

* * * * * * * * * *

Q. You also have mail inquiries; is that right? A. That's right.

147 Q. I see. A. The local ones are by telephone. The only time we can ask them is when they ask us to send them some booklets.

In the case of—I don't know whether Mr. Wood brought it out or not, but we had a piece published in Bill Gould's column. At that time we got over 100 calls, and 75 percent of them were right from within the District of Columbia.

Q. By that—what type of inquiries were they? A. We had published in his column that we had available these free pamphlets for anyone who was interested.

* * * * * * * * * *

The Court: I think it is clear that the witness testified to what he knows of his own knowledge. You are talking about your service department?

The Witness: Yes, sir.

The Court: And which you say you have charge of?

The Witness: Yes, I do.

* * * * * * * * * *

148 Q. Did you do anything in response to these telephone calls or inquiries? A. We sent them—if they asked for a specific pamphlet, we sent them the pamphlet. If they asked for a selection, anything, we sent them a complete file of our free material.

Q. Will you state whether or not there is any other publicity of any kind similar to this in recent months since July 1st? A. We have advertised very recently in the papers that we have our film library available to all the schools and organizations of the District of Columbia. We are also again in the process of offering our return stamps to any charitable organization or childrens home that are interested in receiving them.

* * * * * * * * * *

Cross Examination

By Mr. Wixson:

157 Q. I see. Have you looked over that list, that mailing list, the one that has been offered in evidence as Petitioner's Exhibit No. 10? A. I know the list.

* * * * * * * * * *

Q. What do you have to do with the preparation of the list? A. The request for names comes into our office. People who are interested in conservation or in receiving news that is contained in this publication request to be placed on the mailing list.

* * * * * * * * * *

165 Q. Has there been any other donation locally that you can recall? A. We give every year to the Boys Athletic Club. We give to the Community Chest. We give to the Red Cross, and other charitable organizations of the District of Columbia.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED MAR 19 1954

Joseph W. Stewart
CLERK

No. 11,754

DISTRICT OF COLUMBIA, *Petitioner*,

v.

NATIONAL WILDLIFE FEDERATION, *Respondent*.

ON PETITION FOR REVIEW OF A DECISION OF THE DISTRICT OF COLUMBIA TAX COURT

PETITION FOR REHEARING EN BANC

The District of Columbia, petitioner in the above-entitled case, respectfully petitions the Court for a rehearing of said case by the entire Court sitting *en banc*.

This Court, consisting of Circuit Judges Bazelon, Fahy and Washington, in its opinion decided March 4, 1954, affirmed a decision of the District of Columbia Tax Court which adjudged erroneous an assessment of taxes on the personal property of National Wildlife Federation for the fiscal year July 1, 1952, to June 30, 1953, and determined that the Federation is entitled to a refund of the taxes which it had paid.

The grounds for this petition are as follows:

This Court, in its opinion of March 4, 1954, discussing the activities of the Federation said (p. 3-4):

> "It is true the local activities of the Federation by no means predominate. The employees at headquarters here devote but a small part of their time to local benefits. No large amount of fish and wildlife resources in the District of Columbia enlists the concern of the Federation. Furthermore, only 831 names on a mailing list of over half a million are located here and only about 150 local residents receive the publication 'Conservation News'. While its facilities are to a degree available to and are in fact used by District residents and schools, only in the sense that its over-all activities are conducted from its headquarters can the Federation be said to be primarily local.
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> "Accepting, therefore, as a fact that the Federation's District activities are relatively minor when measured in terms of purely local benefits, we must reject the District's legal conclusion that this forecloses the exemption. * * *."

Notwithstanding the established fact that National Wildlife Federation is a national organization whose activities on behalf of the District of Columbia are relatively minor, this Court's opinion concluded that the Federation was entitled to subsidization of its activities by the District of Columbia through tax exemption. The opinion of March 4, 1954, rejected the argument of the District of Columbia that exemption from taxation was justified, as stated in *Washington Chapter of the American Institute of Banking* v. *District of Columbia,* ..... U. S. App. D. C. ....., 203 F. 2d 68, "* * * only upon the ground that the concession is due as a quid pro quo for the performance of a service essentially public, which the state is thereby, at least partially, relieved pro tanto from the necessity of performing", and that similar statements had been made by this Court in

three prior cases. The opinion of March 4, 1954, held that the prior decisions of this Court did not require the rendition to the District of Columbia of any service whatsoever.

The opinion of March 4, 1954, is an abnegation of the requirements for tax exemption set forth in *Hazen* v. *National Rifle Ass'n of America, Inc.*, 69 App. D. C. 339, 101 F. 2d 432; *District of Columbia* v. *Mt. Vernon Seminary*, 69 App. D. C. 251, 100 F. 2d 116; *Government Services Inc.* v. *District of Columbia*, 88 U. S. App. D. C. 360, 189 F. 2d 662, cert. denied, 342 U. S. 828; and *Washington Chapter of the American Institute of Banking* v. *District of Columbia*, *supra*. Quite obviously the decision entered in No. 11,754 on March 4, 1954, reaches the conclusion that this Court on four other occasions erred in its statements that tax exemption is founded on the predicate that the tax exempt organization performs a service essentially public, thereby rendering to the public a *quid pro quo* in return for its relief from taxation.

This Court in the *Washington Chapter of the American Institute of Banking* case, *supra*, said of the theory of *quid pro quo* that:

> "Without that concurring prerequisite, an exemption becomes virtually a gift of public funds, at the expense of the taxpayer."

Under the decision of this Court in the latest case involving tax exemption, this Court has stamped with its approval the gift of public funds at the expense of the taxpayer without the aforesaid well-established prerequisite.

In view of the statements of this Court in the decisions prior to the present one, which are in fact admonitions to the taxing authorities of the District of Columbia, that the element of public service to the District of Columbia must be present before the taxing authorities may confer tax exemption upon any organization, the decision of this Court on March 4, 1954, makes it virtually impossible for the Dis-

trict of Columbia properly to administer the several provisions of law governing tax exemption in the District of Columbia. The situation created by the latest pronouncement of this Court so seriously affects the administration of the statutes governing tax exemption in the District of Columbia through its negation of the basic philosophy of tax exemption expressed by this Court on so many other occasions commencing on October 10, 1938, with the case of *District of Columbia* v. *Mt. Vernon Seminary,* 69 App. D. C. 251, 100 F. 2d 116, and continuing through *Washington Chapter of the American Institute of Banking* v. *District of Columbia, supra,* on March 19, 1953, that this Court should reconsider this matter *en banc.*

The Decision Of This Court On March 4, 1954, Is Contrary To And Overrules Every Prior Decision Of This Court Concerning The Basic Philosophy Of Tax Exemption.

In *District of Columbia* v. *Mt. Vernon Seminary, supra,* this Court said of Mt. Vernon Seminary:

> "The important consideration is that the school shall measure up to standards of curriculum and pedagogy set by the government. So long as it does—and there is no contention to the contrary in this case—*it performs a function which must otherwise be performed by the government* and, consequently, comes within the reason for the subsidy which is implicit in a tax exemption." (Emphasis supplied.)

And the property involved in the *Mt. Vernon Seminary* case included personal property as well as real property.

In *Hazen* v. *National Rifle Ass'n of America, supra,* this Court denied the Association exemption from personal property taxation on the ground, among others, that "It does not, therefore, in any real sense relieve the government of its burden of public education", and this Court in that case said:

> "For all these reasons, therefore, the necessity for governmental subsidy or immunity which is implicit in tax exemption—upon the theory that the government is relieved of its burdens—fails in the present case."

It is notable that in this statement there is no reference alone to educational institutions, for this Court spoke of tax exemption generally, not of tax exemption to any one type of organization.

In *Government Services, Inc.* v. *District of Columbia, supra,* this Court denied exemption to the corporation from franchise, motor vehicle and personal property taxes. This Court rejected the argument of the corporation that it was a charitable organization because it sells meals and recreation services at moderate prices for the benefit of government employees, and rejected also the contention of the corporation that the activities in which it engaged met the test for tax exemption, which is that charitable institutions lessen the burdens of government. As this Court said:

> "These cafeterias no more reduce the burdens of government than do any of the several moderate-price cafeterias in the District of Columbia, also serving Government employees. They are not more in the public weal than is a cut-rate store, or a public utility, or a newspaper."

And finally, in *Washington Chapter of the American Institute of Banking* v. *District of Columbia, supra,* in which the District of Columbia Tax Court had denied exemption to the Chapter on one single ground, "that Chapter does not render a service which relieves the District of Columbia of a burden it would otherwise have to assume and that it therefore fails to come within the intended purpose of the statute", this Court emphatically reaffirmed the proposition stated by it in its earlier cases that it was the relief of the District of Columbia of a burden it would otherwise

have to assume which was the obligation an organization seeking exemption from taxation must meet before it will be entitled to that exemption. Moreover, this Court specifically considered this basic question of tax exemption for, in its opinion, this Court said:

> "The precise question before this court, then, is whether the Tax Court was justified in reading into the statute this requirement, for which, at first blush, there appears to be no basis in the Act itself. We think that the Tax Court was not in error."

There is no contention or conclusion by this Court in the *National Wildlife Federation* case that the Federation either relieves the District of Columbia of any burden of government, or, in fact, applies itself in any real degree to the rendition of a service to the residents of the District of Columbia.

The decision of this Court in the *National Wildlife Federation* case attempts to explain the prior pronouncements of this Court concerning the relief of the government from its burdens. Citing *Hazen* v. *National Rifle Ass'n of America, supra,* wherein this Court said "the necessity for governmental subsidy or immunity which is implicit in tax exemption—upon the theory that the government is relieved of its burdens—fails in the present case." this Court, in the *National Wildlife Federation* case, said:

> "We think this statement of the theory of tax exemption is not to be read as necessitating a showing that government is in fact relieved in a particular case of something which it would then do, or do at any particular time."

The meaning of this statement is obscure, for this Court did not follow its statement with an explanation as to what, if any, burden must be assumed by a tax exempt organization. This Court also referred to *District of Columbia* v. *Mt. Vernon Seminary, supra,* wherein this Court had said:

> "It is true the court indicated that the school 'performs a function which must otherwise be performed by the government and, consequently, comes within the reason for the subsidy which is implicit in a tax exemption'."

But this Court followed up the quotation from *District of Columbia* v. *Mt. Vernon Seminary, supra,* by saying:

> "Again, however, this statement cannot be read, in the context of the opinion, as holding that it is necessary to prove a definitely ascertainable *quid pro quo,* much less one primarily to the particular government which grants the exemption."

No other statement is made in the *National Wildlife Federation* case concerning *District of Columbia* v. *Mt. Vernon Seminary, supra,* so far as the theory of tax exemption, expressed in the *Mt. Vernon Seminary* case is concerned. More confusing, however, is the conclusion of this Court in the *National Wildlife Federation* case that a *quid pro quo* need not accrue to the benefit of the government granting the exemption. It is impossible to reconcile this statement of this Court with that of this same Court in the *Washington Chapter of the American Institute of Banking* case, *supra,* wherein this Court, in footnote 12 of its opinion, said:

> "It is true that some of the cases supporting the rule involved foreign corporations. But the reason for denial of the exemption in such cases was not that the corporations were organized or created in another state but that such corporations failed to provide educational services in the state where exemption was sought *and consequently failed to relieve that state and its people of burdens which might otherwise be imposed on them. Methodist Book Concern* v. *Galloway,* 186 Ore. 585, 208 P. 2d 319 (1949). *Obviously, if a domestic corporation performs no such services and provides no such relief, it cannot claim tax exemption with better*

justification than could a foreign corporation.'' (Emphasis supplied.)

The case of *Methodist Book Concern* v. *Galloway,* 186 Ore. 585, 208 P. 2d 319, cited with approval by this Court in the *Washington Chapter* case, concerned a statutory provision exempting from taxation:

> ''(3) The personal property of all literary, benevolent, charitable and scientific institutions incorporated within this state, and such real estate belonging to such institutions as shall be actually occupied for the purposes for which they were incorporated.''

The statutory provision for the exemption of personal property in the District of Columbia applies only to ''library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia.'' It does not permit the granting of such exemption to foreign corporations, and it was upon this very point that the decision of *Methodist Book Concern* v. *Galloway, supra,* was decided. The Supreme Court of Oregon, in its decision, said:

> ''The circumstance which justifies the granting of tax exemption to a domestic corporation, while withholding it from one organized under the laws of a sister state is not the fact that one corporation is domestic and the other foreign. The basis for the distinction is found in the fact that the domestic charitable corporation performs a function in the state of its incorporation which is of direct interest to that state and its people. It is relieving the state and its people of burdens which might otherwise be imposed upon them. * * *.''

The record in this case shows, and this Court found, ''* * * that the Federation's District activities are relatively minor when measured in terms of purely local benefits''. This Court said also, ''The employees at headquarters here devote but a small part of their time to local benefits.'' If

it were the United States Government which was directed by this Court to subsidize this institution of nationwide activity and interest, the theory implicit in this Court's decision that a benefit to a particular community need not be shown to jusitify a tax exemption would be applicable. But that is not the situation. The record discloses that the National Wildlife Federation is a national organization, and that it uses its resources, not in aid of the District of Columbia, but to aid and assist every State and District in the Union except the District of Columbia. Yet it is the District of Columbia, and not the United States, which will be required by this Court's decision to subsidize the Federation. It will be the people of the District of Columbia, and not the people of the United States generally, whose taxes must be increased to compensate for the loss of revenue resulting from the cumulative effect of tax exemptions accorded this national organization, and the myriad other national organizations which will flock to the tax free haven of the District of Columbia if this Court's latest decision stands. The sums appropriated annually by Congress for the maintenance of the District of Columbia Government are not made from the General Revenues of the Federal Government, but from the taxes imposed upon residents of the District of Columbia, to which the Federal Government adds such contribution as it sees fit—in the fiscal year 1954 the Federal contribution was $12 million and the total appropriation was almost $148 million (Public Law 173, 83rd Congress, Chapter 299, 1st Session). The difference of $136 million in taxes must be paid by the people of the District, for by the Act of Congress approved June 29, 1922, 42 Stat. 668, 669, the Commissioners of the District of Columbia are required to determine and fix annually such rate of taxation on the real and personal property subject to taxation in the District as will,

> "* * * when added to the other taxes and revenues of the District, produce money enough to enable

> the District to pay promptly and in full all sums directed by Congress to be paid by the District, and for which appropriation has been duly made; * * *."

There is no basic difference between the statute involved in this case and that which was involved in *Methodist Book Concern* v. *Galloway, supra.* There is no basic difference between the reasons inherent in the granting of exemption from taxation in the State of Oregon and those inherent in the granting of tax exemption in the District of Columbia, and there is no basic reason either in logic or in law which requires that the District of Columbia shall grant exemption from taxation to corporations locally chartered, which under any conception are in fact foreign corporations without interest in the District of Columbia, except that which motivated their incorporation here because this is the Nation's Capital. Yet it appears that this Court has said in its latest decision that no longer is it requisite for a corporation in the District of Columbia to furnish the District of Columbia any definitely ascertainable *quid pro quo.* In other words, under this Court's decision, corporations seeking tax exemption in the District of Columbia are encouraged to devote their entire activities and their entire resources to the exclusion of the District of Columbia, which nevertheless is required to support them through tax exemption. There can be no justification for the application to the District of Columbia alone of a rationale which is rejected elsewhere and has been rejected by this Court in its earlier decisions.

The opinion of March 4, 1954, states:

> "While of course the statute granting the exemption is due to a Congressional purpose to aid the public, this does not require a scientific institution to show that it performs a service of substantial character which otherwise the District government, or any other, would actually assume. Since

> the Federation is incorporated under the laws of the District of Columbia, is not conducted for private gain, and is truly a scientific institution, it qualifies for the exemption under the statute. *District of Columbia* v. *Catholic Education Press*, 91 U. S. App. D. C. 126, 127, 199 F. 2d 176, 177, *cert. denied*, 344 U. S. 896."

In a second reference to *District of Columbia* v. *Catholic Education Press*, 91 U. S. App. D. C. 126, 199 F. 2d 176, cert. denied 344 U. S. 896, this Court's decision said:

> "The opinion omits all reference to the *quid pro quo* theory, notwithstanding it was urged, though not in the detail or with the same precision as now. The court proceeds on the assumption that the scientific character of the institution, accompanied with the other statutory requisites, calls the exemption into effect. We reaffirm that position. We add that the work of the Federation, which has been described, not only places it literally in the category of scientific institutions but is of a public character. Not only is there the absence of private gain but there is the presence of public benefit through the preservation and development of natural resources of wildlife within the nation."

From the omission of any reference to the *quid pro quo* theory in the opinion in the *Catholic Education Press* case, this Court's decision on March 4, 1954, apparently concludes that this Court in its earlier decision involving the Catholic Education Press renunciated the thought that any demonstrable relief of the government from any of its burdens must be shown to entitle any organization, whether charitable, library, benevolent, or scientific, to the subsidization of tax immunity. The references by this Court in the opinion of March 4, 1954, to the *Catholic Education Press* case do not mention the fact that this Court in that case found that the Catholic Education Press is an integral part of the Catholic University of America, which admittedly, as an educational

institution, is exempt from taxation. This Court said of the Press,

> "The obvious purpose of its formation was that the Press should assist the University in its work in the field of education.
>
> "It is difficult to conceive of a more complete identity between two institutions than that of the Catholic Education Press and The Catholic University of America."

And finally this Court said:

> "If the Catholic University of America, in its own name, should engage in activities identical with those of its subsidiary, the Catholic Education Press, we suppose its right to exemption from taxation on the personal property used in such activities would not be questioned. We see no reason for denying the exemption to the University merely because it chooses to do the work through a separate non-profit corporation."

Having determined that the Catholic Education Press is an integral part of the Catholic University of America, an educational institution, it was unnecessary for this Court in that case to discuss, or comment upon, the *quid pro quo* theory, for this Court had held in the *Mt. Vernon Seminary* case, *supra,* decided in 1938, that:

> "The important consideration is that the school shall measure up to standards of curriculum and pedagogy set by the government. So long as it does—and there is no contention to the contrary in this case—it performs a function which must otherwise be performed by the government and, consequently, comes within the reason for the subsidy which is implicit in a tax exemption."

This Court also said on March 4, 1954, that the opinion in *Government Services* v. *District of Columbia, supra,*

seeks no support from a *quid pro quo* theory. But this Court in that case noted that Government Services was not a charitable organization, and that it was not entitled to tax exemption because it did not reduce the burden of Government. As this Court said in the *Government Services case:*

> "If a general and public-spirited operation saves these residents some of the costs of their living, why should not the irreducible net earnings (otherwise to be presented to the Federal Government) be used in part to bear the burdens of municipal government services? Upon what basis can it reasonably be contended that such accumulations should go to the Federal Government free of municipal charges?"

Surely this is a recognition of the applicability of the doctrine of *quid pro quo,* although not in words so identified.

Yet National Wildlife Federation, which admittedly does not operate to any real extent within the District of Columbia, but provides all of its benefits to the people of other localities, is entitled by the decision of this Court of March 4, 1954, to exemption from taxation and to subsidization by the District of Columbia. There is no difference in principle between the necessity that Government Services, Inc., shall bear its just proportion of the tax burdens of the people of the District of Columbia and that which ought to be required of National Wildlife Federation.

This Court in the opinion of March 4, 1954 said that *District of Columbia* v. *Catholic Education Press, supra,* should be construed to hold that:

> "* * * the public benefit which the government 'reasonably might assume' is sufficiently proved when the activity is in fact scientific and private gain is excluded."

And to this statement the Court appends the statement:

> "* * * We add that the work of the Federation, which has been described, not only places it literally in the category of scientific institutions but is of a public character. Not only is there the absence of private gain but there is the presence of public benefit through the preservation and development of natural resources of wildlife within the nation."

Undoubtedly National Wildlife Federation benefits natural resources of wildlife within the nation. Under what theory, however, must the District of Columbia support the encouragement and propagation of wildlife throughout the several States and the entire North American Continent for the benefit of those States and of the people who reside therein? If this Court's decision is to govern the exemption from taxation of corporations whose situs is in the District of Columbia, but whose interests are elsewhere, the District of Columbia will be required to support, through tax exemption, organizations whose avowed purpose is to benefit not the District of Columbia, or even the people of this nation, but some particular group of persons or some particular State, or in fact some particular foreign country. That this result is logical is demonstrated by the conclusion of this Court on March 4, 1954 that the statement in *District of Columbia* v. *Mt. Vernon Seminary, supra,* that the school "performs a function which must otherwise be performed by the government and, consequently, comes within the reason for the subsidy which is implicit in a tax exemption", cannot be read, in the context of the opinion, "as holding that it is necessary to prove a definitely ascertainable *quid pro quo, much less one primarily to the particular Government which grants the exemption.*" (Emphasis supplied.)

This Court on March 4, 1954, in a footnote numbered 3 to its opinion said:

> "If a religious exemption, see § 47-801a, D. C. Code (1951), were involved it could hardly be

thought it must be denied because the government could not directly engage in the establishment of religious institutions."

The immediate answer to this observation is found in the statute relating to personal property taxation, for only library, benevolent, charitable, and scientific institutions may receive exemption from personal property taxation under the statute. The right of religious organizations to exemption from taxation, as expressed locally in the statute relating to exemption of real property from taxation in the District of Columbia, is so firmly ingrained in the laws and the thinking of the people of this country, that it is almost futile to attempt to draw an analogy between the exemption of a religious organization and the exemption of a non-religious organization. Certainly, if any rationale is required to sustain the exemption of religious organizations from taxation on a *quid pro quo* theory, that rationale may be found in the fact that such organizations inherently and manifestly promote the welfare of the community in which they are located, not through the expenditure of money, but through the promotion and encouragement of morality and of an adherence to the principles of Christianity and Judaism, for it is these religions which predominately provide the spiritual guidance of the people of this nation. If another reason is sought as a postulate for the extension of tax exemption to religious organizations it is found in the fact that this nation had its inception in the desire of people to worship freely in the manner chosen by them. This concept of religious freedom is a right preserved by our Constitution. The exemption accorded the churches of the District of Columbia is in reality an exemption of the people of the District of Columbia themselves. Unlike organizations such as National Wildlife Federation, a church serves the people of the State which grants it exemption from taxation. If a *quid pro quo* must be found for a church, it may be found in its service to the locality where it

exists and where it receives its assistance through tax exemption, and the people have a right to say that they shall not tax themselves for exercising their constitutionally protected right.

The Evidence Before The District of Columbia Tax Court Of The Activities Of National Wildlife Federation Subsequent To July 1, 1952, Was Erroneously Admitted.

The opinion of this Court on March 4, 1954, disposes of the contention of the District of Columbia that the Tax Court erred in admitting evidence of the Federation's activities subsequent to July 1, 1952, since the status of the organization in relation to the exemption is that which it had on July 1, by the statement:

> "* * * the Tax Court was justified in finding that as of July 1, 1952, the Federation was a scientific institution, incorporated under the laws of the District of Columbia, and not conducted for private gain."

The record in this case before this Court, as shown by the Brief of the District of Columbia, contrary to the statement in the opinion of March 4, 1954, conclusively establishes that the District of Columbia Tax Court could not, except upon surmise, find that the great majority of the activities of National Wildlife Federation described as occuring subsequent to July 1, 1952, were pursued at the commencement of the tax fiscal year. Thus, it was impossible for the District of Columbia Tax Court, and for this Court, to find that National Wildlife Federation was in fact, at the commencement of the tax fiscal year, engaging in any scientific activity which would provide a basis for tax exemption. The conclusion of this Court affirming the decision of the Tax Court encourages organizations seeking tax exemption in the District of Columbia to describe their activities at such time as they may choose, without relation to the period for

which they seek tax exemption. This Court cites no authority for its statement that the District of Columbia Tax Court correctly admitted evidence of the activities of National Wildlife Federation subsequent to the very period for which the organization sought and received tax exemption. The issue here is simply whether the decisions of this Court in *Parlton* v. *United States,* 64 App. D. C. 169, 75 F. 2d 772, and *Spund* v. *Myers,* 67 App. D. C. 135, 90 F. 2d 380, are applicable in tax cases. Under the decision of this Court on March 4, 1954, the evidentiary rules laid down in *Parlton* v. *United States, supra,* and *Spund* v. *Myers, supra,* do not recite the law applicable in tax matters, although apparently they are applicable in every other type of case. The trial of tax cases is no different than the trial of any other type of case. The rules of evidence are the same as those in other cases. No other conclusion is possible than that this Court has held that the introduction of the charter of a corporation seeking exemption from taxation in the District of Columbia, and of the by-laws of that corporation, is sufficient to establish its right to tax exemption, if by those instruments it appears that, in writing at least, the organization is said to be a library, benevolent, charitable, or scientific institution not conducted for private gain and incorporated under the laws of the United States, or of the District of Columbia. Neither the District of Columbia Tax Court nor this Court, following the rules of evidence, as stated in *Parlton* v. *United States, supra,* and *Spund* v. *Myers, supra,* could conceivably have acted upon any material evidence other than the certificate of incorporation of National Wildlife Federation and its constitution and by-laws.

This Court in *White* v. *Central Dispensary and Emergency Hospital,* 69 App. D. C. 122, 126, 99 F. 2d 355, 359, said:

> "But even if it be a fact that the appellee is incorporated as a charitable corporation and even

> if judicial notice could be taken that it is so incorporated, this would not conclude the question whether or not it is a charity. * * * If, therefore, the appellee in the instant case seeks to exonerate itself from liability by pleading as an affirmative defense that it is a charitable corporation, the trial court will consider not merely its charter, but also any competent evidence offered in respect of the actualities of its operations."

And finally this Court, at page 129 of its opinion in that case, said:

> "4. In view of the foregoing we hold that the declaration states a cause of action against the appellee as a corporation organized and doing business in a manner subjecting it to the usual rules of substantive law which hold a corporation, just as they hold an individual, responsible for tortious injury to others; *and we hold that if the appellee seeks to avoid the application of these rules of law it must plead and prove as an affirmative defense that it is so organized and so conducts its business that it is excepted from their operation.* * * *"
> (Emphasis supplied.)

CONCLUSION

The District of Columbia urges this Court to rehear this case *en banc*. The situation developing as a consequence of the rejection by this Court on March 4, 1954, of the doctrine that an organization seeking tax exemption shall demonstrate that it renders to the government a service which that government otherwise would be required to assume, vitally affects the administration of the statutes governing exemption from taxation in the District of Columbia. For this reason, and for the other reasons urged in this petition for rehearing, it is respectfully submitted that this petition should be granted, and that this case should be heard before

the entire Bench of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Henry E. Wixon, Assistant Corporation Counsel for the District of Columbia, attorney for petitioner in the above-entitled case, hereby certify that the foregoing petition is presented in good faith and not for delay.

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March ..., 1954.